TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 458

THE SINGER SEWING MACHINE COMPANY, APPELLANT,

vs.

ROBERT C. BRICKELL, ATTORNEY GENERAL OF THE STATE OF ALABAMA; C. BROOKS SMITH, AUDITOR OF THE STATE OF ALABAMA; J. LEE LONG ET AL., COMPOSING THE STATE TAX COMMISSION OF ALABAMA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

FILED FEBRUARY 17, 1913.

(23,548)

(23,548)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 973.

THE SINGER SEWING MACHINE COMPANY, APPELLANT,

vs.

ROBERT C. BRICKELL, ATTORNEY GENERAL OF THE STATE OF ALABAMA; C. BROOKS SMITH, AUDITOR OF THE STATE OF ALABAMA; J. LEE LONG ET AL., COMPOSING THE STATE TAX COMMISSION OF ALABAMA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 6, 1913.

TRANSCRIPT OF RECORD.

The Supreme Court of the United States.

SINGER SEWING MACHINE COMPANY, Appellant,
versus
ROBERT C. BRICKELL, Attorney General of the State of Alabama; C. Brooks Smith, Auditor of the State of Alabama; J. Lee Long, J. B. Powell, and A. A. Evans, Composing the State Tax Commission of Alabama; J. B. Gaston, Judge of Probate, Montgomery County, Alabama; John C. Hardaway, Tax Commissioner of Montgomery County, Alabama; H. T. Benton, Judge of Probate, Russell County, Alabama; J. E. Owens, Tax Commissioner of Russell County, Alabama; J. N. Stanford, Judge of Probate, Wilcox County, Alabama, and T. F. Lovell, Tax Commissioner of Wilcox County, Alabama, Appellees.

Appeal from the District Court of the United States for the Southern District of Alabama.

1 *Original Bill of Complaint and Exhibit Thereto.*

In the District Court of the United States for the Southern District of Alabama, Southern Division. In Equity.

To the Hon. Harry T. Toulmin, Judge of the District Court of the United States for the Southern Division of the Southern District of Alabama:

Singer Sewing Machine Company, a corporation created, organized and existing under the laws of the State of New Jersey, brings this its bill of complaint against Robt. C. Brickell, Attorney General of the State of Alabama, C. Brooks Smith, Auditor of the State of Alabama, and J. Lee Long, A. A. Evans, and J. B. Powell, composing the State Tax Commission of Alabama, H. T. Benton, Judge of Probate of Russell County, Alabama, J. E. Owens, Tax Commissioner of Russell County, Alabama, J. N. Stanford, Judge of Probate of Wilcox County, Alabama, and T. F. Lovell, Tax Commissioner of Wilcox County, Alabama, J. B. Gaston, Judge of Probate of Montgomery County, Alabama, and Jno. C. Hardaway, Tax Commissioner of Montgomery County, Alabama, and thereupon humbly complaining says:

1. That your orator, Singer Sewing Machine Company, is a corporation created, organized and existing under the laws of the State of New Jersey, and is a citizen and resident of said State of New Jersey; that each and all of the defendants are citizens and residents of the State of Alabama; that the said defendant, Robt. C. Brickell, is Attorney General of the State of Alabama; that the defendant C. Brooks Smith, is Auditor of the State of Alabama; that

the defendants, J. Lee Long, J. B. Powell and A. A. Evans compose the membership of the State Tax Commission of Alabama, which Commission was heretofore created, and now exists under the laws of Alabama; that the defendant, J. B. Gaston, is Judge of Probate of Montgomery County, Alabama, and the defendant, Jno. C. Hardaway, is Tax Commissioner of said County of Montgomery, and each of the above named defendants resides at Montgomery in said State; that the defendant, H. T. Benton, is Judge of Probate of Russell County, Alabama, and the defendant, J. E. Owens, is Tax Commissioner of said County of Russell, both of whom reside at Seal in said State; that the defendant, J. N. Stanford, is Judge of Probate of Wilcox County, Alabama, and the defendant,
2 T. F. Lovell, is Tax Commissioner of Wilcox County, Alabama, both of whom reside at Camden in said State.

2. Orator further avers that said Robt. C. Brickell, as such Attorney General of the State of Alabama, is charged with the duty of advising the tax officers of the State of Alabama; and of advising the other defendants herein named, with respect to the validity and the application of the tax statutes of the State of Alabama of the class hereinafter mentioned; and that the defendant, C. Brooks Smith, as such Auditor of the State of Alabama, and the said J. Lee Long, J. B. Powell and A. A. Evans, as such members of the State Tax Commission of Alabama, are charged with the duty of administering the tax statutes of the State of Alabama and of directing and enforcing the collection by the several tax officers of the State of Alabama of the license and privilege taxes of the class hereinafter mentioned.

3. Orator further avers that on, towit, the 6th day of January, 1905, it filed a certified copy of its articles of incorporation with the Secretary of State of the State of Alabama, and did also designate a known place of business, in the city of Mobile, in the State of Alabama, and an authorized agent thereat, all as required by the constitution and laws of the State of Alabama, to entitle it to engage in business in the State of Alabama, and that it was on Jan. 1, 1912, and is now, duly authorized to transact its business in said State.

4. Orator further avers that after it so qualified to engage in business in the State of Alabama, it established a number of places of business in the State of Alabama, which number was increased from time to time, so that on Jan. 1, 1912, your orator had established in thirty counties in the State of Alabama thirty-six regular places of business, or stores, in the counties, towns, and cities shown by the schedule or list hereto attached as part hereof, and marked "Exhibit No. 1"; which schedule also shows the amount of the license taxes attempted to be exacted of orator under section 32 of the Act of March 31, 1911, hereinafter referred to; all of which stores are still operated by your orator; that orator buys sewing machines, and parts of such sewing machines to supply breakage and defects therein, and needles, sewing machine oil, darning cotton, and sewing machine accessories of a large variety, from with-

out the State of Alabama, and ships or causes the same to
3 be shipped to its said places of business in the State of Alabama, which goods, wares, and merchandise orator keeps at its said regularly established places of business in the State of Alabama for sale to the general public.

5. Orator further avers that on and prior to Jan. 1, 1912, as well as at the time of the filing of this bill of complaint, orator conducted its business in all of the counties of the State of Alabama, except the County of Russell, in the following manner: Some of the sewing machines sold by it in the State of Alabama are delivered to its salesmen at its regularly established places of business, as aforesaid, and placed aboard wagons and teams at such places of business, and then taken by its salesmen through the rural districts of the State of Alabama, and sold from such wagons and teams, and, in some instances delivery to the purchasers is made contemporaneously with the sale, and in other instances such salesmen use the machines so carried about on such wagons displaying them as sample machines, taking orders for other machines, which orders are returned by such salesmen to its regularly established places of business in the State of Alabama, from which such salesmen work, as aforesaid, and there accepted or rejected, and if accepted, the machines are forwarded to the purchasers on such orders; that such sales are made either for cash or on time payments, and if on time payments your orator reserves by proper contract the title to the machines so sold until payment is made therefor; that such salesmen carry with them through the rural districts of the State, the accounts of machine purchasers as they mature from time to time, and collect the same as incidental to their business of selling machines; that your orator also sells sewing machines at its regularly established places of business in said counties, as aforesaid, and delivers such sewing machines to purchasers by using wagons and teams; that in said counties where it has established places of business in making delivery of sewing machines that have been sold at its places of business your orator uses the same wagons and teams that are in use by its salesmen in delivering or displaying sewing machines in the rural districts of the state, as set forth in this paragraph; and your orator avers that on Jan. 1, 1912, it had in its employ, and now has, one hundred ninety-seven sewing machine agents and employees in the State of Alabama, and that on said date it was using, and is now using, one hundred sixty-five wagons and teams in the State of Alabama, in
so delivering or displaying such sewing machines; the num-
4 ber of wagons and teams so operated in each county being shown on said "Exhibit No. 1," opposite the name of the respective counties, and such wagons and teams are confined in their operation to the counties there indicated; that said sewing machines, so sold by orator are of the average weight of one hundred thirty-five pounds each; that there are many other merchants in the State of Alabama who sell sewing machines of a different manufacture at their places of business, and the average weight of such machines is also about one hundred thirty-five pounds; that

on account of such weight it is the custom and practice of orator and of such other merchants to make delivery thereof by using wagons and teams, whether the sales are made at their places of business or away from the same; and it is impossible for orator to conduct its business without delivering said machines to its customers, and for that purpose orator is compelled to use wagons and teams.

6. Your orator further avers that it also operates a regularly established place of business in the City of Columbus, Georgia, and there keeps for sale to the public sewing machines and other articles of the class and character particularly mentioned in paragraph four of this bill of complaint; that in connection with said place of business of your orator, it did on January 1st, 1912, and does at this time, employ W. B. Ector and G. H. Edwards to sell and deliver its sewing machines and accessories in Russell County, Alabama, which county adjoins the Georgia state line; that your orator operated its said place of business at Columbus, Georgia, and in connection therewith conducted its business in said County of Russell, for some years prior to January 1st, 1912, and as a result thereof your orator acquired a large and valuable trade in the sale and delivery of sewing machines in the said County of Russell; that during the year 1911, the gross value of the sewing machines so sold by your orator in the said County of Russell, through its said place of business in the City of Columbus, Georgia, was largely in excess of the sum of three thousand dollars, and that the right of your orator to carry on and conduct its said business in said County of Russell is a valuable right, and exceeds, exclusive of interest and costs, the sum or value of three thousand dollars; that your orator does not sell or deliver any sewing machines or accessories in said County of Russell except in the following manner, viz:

Its said salesmen use wagons and teams in going about and displaying sample sewing machines and by the use thereof obtain orders for sewing machines and accessories, and such orders, when so received by such salesmen, are transmitted by them to your orator at Columbus, Georgia, for its acceptance or rejection, and if accepted, such machines or other articles so ordered are taken out of its stock of goods, wares, and merchandise at its said place of business in Columbus, Georgia, and there placed aboard wagons drawn by teams and then delivered by means of such wagons and teams to the purchasers in said Russell County.

7. Your orator further avers that since the time it established its business in Alabama, it has assessed its stock of goods, wares, and merchandise for taxation in the several counties of the State of Alabama where its stores have been located, and did pay the ad valorem taxes thereon, both state, county, and municipal, as other merchants are required by law to do; that your orator also paid the licenses exacted of it by the cities or towns of the State of Alabama in which it engaged in business for its right to carry on its business as a merchant.

8. Orator further avers that the Legislature of Alabama, at its session of 1911, enacted a statute entitled, "An Act to Further

Provide for the Revenues of the State of Alabama," approved March 31, 1911, and that Section 32 of said Act is as follows:

"SEC. 32. Sewing Machines.—Each person, firm or corporation selling or delivering sewing machines, either in person or through agents, shall pay fifty dollars annually, for each county in which they may sell or deliver said articles. And for each wagon and team used in delivering or displaying the same an additional sum in each county of twenty-five dollars annually; but this section shall not apply to merchants selling the above enumerated articles at their regularly established places of business."

9. Your orator further avers that Section 33 F of the Act of the Legislature of Alabama, approved March 31, 1911, entitled, "An Act to further provide for the Revenues of the State of Alabama, provides that:

"The courts of county commissioners or other courts of like jurisdiction except in the cases otherwise provided, may at any regular or special term add to the license and franchise taxes herein levied, such amounts not exceeding fifty per cent of such taxes for county purposes, as, in its judgment, may be necessary, and no license shall be issued without payment of such percentage for county purposes."

And orator avers that pursuant to the authority of said Section 33 F of said Act, the courts of County Commissioners and other courts of like jurisdiction in all of the counties of the State of Alabama, did, prior to January 1, 1912, add to the license taxes so imposed by said section 32 of said Act, fifty per cent of the amount thereof for county purposes.

6 9½. Orator further avers that section 2402 of the Code of 1907 is as follows:

"2402. Payment for, and issue and contents of license.—Before any person, firm, or corporation shall engage in or carry on any business or do any act for which a license is by law required, he or they shall pay to the judge of probate of the county in which it is proposed to engage in or carry on such business, or do such act, the amount required for such license; and upon payment of such amount, and a fee of fifty cents to the probate judge for the issuance of such license and all costs and fees and penalties which shall have accrued, or for which such person, firm, or corporation shall have become liable in any proceedings commenced for the collection of such license, or to enforce payment thereof, such judge shall issue the license countersigned by him in the form and on a blank to be furnished to him by the State auditor, which shall set forth and specify the name of the person, firm, or corporation applying therefor, the business or act which it is proposed to carry on or do thereunder, the number of the location where it is proposed to carry on the same, if such location shall be in a city or town and have a street number, and if not, then specify the location, the amount paid for such license, and the time for which it is issued; and if the license is for a peddler, whether he proposes to travel on foot or on horseback, or on a wagon; and such license shall not be transferable, nor shall it entitle the holder thereof to carry on any

other business or do any other act than that named therein, nor at any other location than that therein specified."

10. Your orator further avers that Section 2223 of the Political Code of Alabama of 1907 provides:

"2223. Powers, authority, and duty of commission.—It shall be the duty of said tax commission, and it shall have power and authority—

"1. To have and exercise general and complete supervision over the assessment and collection of taxes and the enforcement of the tax laws of the state, and over the several county tax assessors, tax collectors, and county tax commissioners in the several counties of the state charged with the duties of assessing or collecting escaped, delinquent, and back taxes and licenses in the several counties of the state and over each and every state and county official charged with the duty of assessing, collecting, or enforcing the payment of taxes, and licenses, to the state or to any county in the state, to the end that all assessments on property, privileges, and franchises in the state shall be made in exact proportion to the just and true value thereof in substantial compliance with the law.

"2. To confer with, advise, and direct all assessors, collectors of state and county taxes, and county tax commissioners, as to their duty under the laws of this state.

"3. To direct actions, prosecutions, and proceedings to be instituted to enforce the laws of this state relating to penalties, forfeitures, liabilities, and punishment of public officers and officers or agents or corporations, companies, or associations, or persons, for failure or neglect to comply with the provisions of the law governing the return, assessment, and taxation of property, privileges, and franchises in this state, and to cause complaints, information, action, or prosecution to be made or instituted against any tax assessor or tax collector in the proper court, or to the proper judge of any court, for the removal from office of such officers for official misconduct or neglect of duty.

"4. To require county or circuit solicitors, and the attorney-general of the state, to commence and prosecute actions, proceedings, and prosecutions for penalties, forfeitures, impeachments, and punishments for violation of the laws of the state in respect to the assessments and collection of taxes and the enforcement of taxation of property, privileges, and franchises, subject to taxation, within the respective jurisdiction or spheres of official duty of said officers."

11. Orator further avers that Section 2245 of the Political Code of Alabama of 1907 is as follows:

"2245. Duty as to license and privilege taxes.—The county tax commissioners shall scrutinize the records and stubs kept in
7 the office of the judge of probate, and if it shall be reported to any commissioner or come to his knowledge that any person, persons, firms, or corporations have failed or refused to take out licenses as required by law, the tax commissioners shall report the same to the judges of probate, who shall forthwith cite such delinquent to appear before them and take out such license. If such delinquent shall fail or refuse to take out license, the tax com-

missioner shall institute or cause to be instituted criminal proceedings against such delinquent, before any court having jurisdiction of such offense. In case of emergency, the tax commissioner must commence the criminal proceedings in the first place. For performing the duties required by this section the tax commissioners are entitled for each case so brought before the probate judges, to be paid by the delinquent, in addition to the license, ten per cent on the amount of the license so collected from each delinquent. And if a criminal prosecution shall be commenced, either by information or indictment, the tax commissioner shall be paid ten per cent of the penalty prescribed in such case, all costs and penalties to be paid in money, but in all proceedings under this section, the license shall not be delinquent before the fifteenth day of January of each year."

12. Orator further avers that section 7712 of the Criminal Code of Alabama of 1907 is as follows:

"7712. Engaging in or carrying on business without license.—Any person who, after the fifteenth day of January in any year, engages in or carries on any business for which a license is required, without having taken out such license, must, on conviction, be fined three times the amount of the state license.

13. Orator further avers that after January 1, 1912, on which date the taxes exacted by Section 32 of said Act of March 31, 1911, became due, your orator was advised by the defendants, Robt. C. Brickell and C. Brooks Smith, acting in their official capacity, as aforesaid, that they and the defendants, J. Lee Long, A. A. Evans and J. B. Powell, acting in their official capacity as members of and composing the State Tax Commission, would insist upon the payment by your orator of the said license taxes; and the said defendants, Robt. C. Brickell, C. Brooks Smith, J. Lee Long, A. A. Evans and J. B. Powell, as such officials, do now insist that said statute is a valid enactment, and that the same will be enforced against orator and its officers and agents immediately after the first day of February, 1912, (on which date said license taxes became delinquent under the laws of Alabama) in event your orator does not pay the license taxes so exacted thereby; and that said defendants will insist upon the payment by your orator of the said license taxes of Fifty Dollars in each of the sixty-seven counties of the State of Alabama in which orator sells or delivers sewing machines through its said agents, and the additional sum of Twenty-five Dollars to and for the use of each such county; and that the said defendants will also insist upon the payment by your orator of the said license tax of Twenty-five Dollars for each of the one hundred sixty-five wagons and teams so used by your
8 orator in delivering or displaying sewing machines in the State of Alabama, and the additional sum of Twelve Dollars and Fifty Cents to and for the use of the said counties of said state where such wagons and teams are operated; and your orator further avers that the said defendants further advised your orator that in the event orator failed to pay said license taxes that the Tax Commissioners of the several counties of the State of Alabama, would

be instructed by the said State Tax Commission to cause citations to issue to this defendant pursuant to Section 2245 of the Code of Alabama, to show cause before the judges of probate of the several counties of the State of Alabama, why such license taxes should not be paid, which, in the event of your orator's liability therefor, would add a penalty of ten per cent to the amount thereof, as the fees or commissions due said Tax Commissioners for causing such citations to issue; and said defendants further advised your orator that in the event orator failed or refused, in obedience to such citations, to take out and pay for such licenses, its agents and employees would be arrested and imprisoned from day to day until they paid such license taxes, or ceased to engage in such business.

14. Your orator further avers that pursuant to the threats so made by said defendants as hereinabove alleged, and in accordance with their instructions, the said T. F. Lovell, Tax Commissioner of Wilcox County, Alabama, and Jno. C. Hardaway, Tax Commissioner of Montgomery County, Alabama, are preparing to cause such citations to issue to this complainant to show cause before said J. N. Stanford and J. B. Gaston, the Judges of Probate respectively of said counties of Wilcox and Montgomery, why such license taxes should not be paid; and that such citations have actually been issued by said J. E. Owens, Tax Commissioner of said County of Russell, as hereinafter alleged; that in the event such citations are issued to your orator by said Judges of Probate, it could only appear before said Judges of Probate and make known to them that your orator is not liable for said taxes for the reasons mentioned in this bill of complaint; that said Judges of Probate have no authority or power under the laws of Alabama to determine your orator's liability therefor; that such Judges of Probate and said Tax Commissioners in making effort to coerce the payment of said license taxes, are governed and controlled by the opinion and advice of the said Robt. C. Brickell, as Attorney General, and your orator could, therefore, have no protection on account
9 of any cause that it might show before said Judges of Probate for the non-payment of said taxes; that by reason of the advice so given to said tax officers by said defendant, Robt. C. Brickell, Attorney General, and on account of the said instructions from said State Tax Commission to the County Tax Commissioners, your orator avers that said County Tax Commissioners will institute, or cause to be instituted, criminal proceedings against your orator's said agents and employees, which proceedings are instituted by the making of an affidavit before a court having jurisdiction of the offense, whereupon, under the laws of Alabama, a warrant of arrest issues for such agents and employees.

15. Your orator further avers that it is advised that said Section 32 of said Act is illegal and void, and incapable of enforcement against your orator and its agents and employees for the reasons hereinafter alleged in this bill of complaint; and it avers that it ought not to be required to pay such taxes; that since the establishment by orator of its business in the State of Alabama it has been growing and developing each year, and that it has now a large

and profitable business established in said State of great value to it, towit, of the sum of Twenty-five Thousand Dollars or more; that the right of your orator to carry on and conduct its said business in the several counties of the State of Alabama exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars; that in the conduct of its business orator is entirely dependent on its agents and employees, and that in the event the said defendants carry out their said threats to cause the arrest and imprisonment of your orator's said agents and employees, orator avers that they will quit its service and that it will be unable to employ others to take their places, and your orator's established business in the several counties of the State of Alabama will be seriously interfered with, if not wholly destroyed; and that your orator will be damaged thereby largely in excess of Three Thousand Dollars, exclusive of interest and costs, which damage, your orator avers, will be irreparable and continued unless the said defendants are enjoined and restrained from causing the arrest of your orator's agents and employees, but orator avers that even though the defendants and others who would execute such threats might be liable in damages to your orator in the event it should be finally held that orator is not liable for said taxes, it will be difficult, if not practicable, to ascertain and estimate, with even proximate certainty, the losses and damage which would result to orator therefrom; that in the event of the execution of such threats by the defendants, the agents and employees of orator will be liable to arrest and imprisonment from day to day, and orator will be required to defend many prosecutions which will result in much vexatious litigation and in the expenditure of a large sum of money in the way of costs and expenses; that the questions of law and of fact in each of said prosecutions will be the same, viz: The liability vel non of your orator for the payment of the taxes attempted to be exacted under said statute, and the defenses which might be interposed by your orator's agents and employees in such prosecutions will be common to each of them, and will involve like legal questions; for and on account of which your orator avers that it is entitled to resort to a court of equity to protect its established business and its right to conduct the same, from such interference, and also thereby to prevent a multiplicity of such criminal prosecutions.

16. Orator further avers that it has at all times since the year 1907 been engaged in business in the State of Alabama in the manner heretofore set up in this bill of complaint; that beginning with the year 1907 a license tax was exacted in and by subdivision 58 of section 2361 of the Code of Alabama of 1907, until superseded by section 32 of the act of March 31, 1911, in the following language:

"Each person, firm, or corporation selling or delivering sewing machines, either in person or through agents, and for each person, firm, or corporation who engages in the business of selling or delivering lightning rods, stoves, ranges, buggies, or other vehicles, twenty-five dollars annually for each county in which they may sell or deliver said articles; and for each wagon and team used in de-

livering or displaying the same an additional sum in each county of ten dollars annually; but this section shall not apply to merchants selling the above enumerated articles at their regularly established places of business."

Orator avers that it complied with said statute and paid said license taxes for the years 1907, 1908, 1909, 1910, and 1911, for the right to so sell and deliver sewing machines to its agents, as well as for the right to use wagons and teams in delivering or displaying the same, although orator avers that it was not liable for the payment of such taxes, for the reasons set up in this bill of complaint; that during each of said years a number of other merchants within the State of Alabama, towit, three hundred, did sell sewing machines at and from their regularly established places of business, and did use wagons and teams in delivering the same when
11 sold from their places of business; and orator avers that at the time of filing this bill of complaint there were a like number of such merchants engaged in the State of Alabama in conducting their business in such manner, but your orator avers that since the year 1907 and at this time the defendants, in the administration of said Code section and in the administration of said section 32 of said act of 1911, did not exact and do not intend to exact said license taxes from any of such merchants so conducting their business in that manner; thereby working an injustice and an illegal discrimination against your orator, and resulting in the denial to your orator of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

17. Orator further avers that on, towit, Feb. 17, 1912, the defendant, J. E. Owens, as tax commissioner of Russell County, Alabama, reported to the defendant, H. T. Benton, as judge of probate of Russell County, that your orator's said agents and employees, W. B. Ector and G. H. Edwards, had not taken out a license for engaging in the business of selling sewing machines in said County of Russell; and thereupon the said H. T. Benton, as such judge of probate, issued citations to said Ector and Edwards to appear before him on Feb. 20, 1912, and take out such licenses; that said Ector and Edwards did appear before such judge of probate on the return day of such citations and declined to take out such licenses, for the reasons mentioned in said bill of complaint, whereupon said Owens made affidavit and caused warrants to issue for the arrest of said Ector and Edwards, charging them with engaging in said business of selling sewing machines in violation of section 7712 of the Code of Alabama; that said Ector and Edwards were arrested under said warrants and each of them made bond for their appearance before the County Court of said County of Russell on March 4, 1912, to answer said charge; that unless the further prosecution of such proceedings against said Ector and Edwards is enjoined by this court, the business of your orator in said County of Russell will be seriously interfered with, if not wholly destroyed, and said Ector and Edwards will quit the employment of your orator, and orator will

thereby lose large sums of money, certainly more than three thousand dollars, exclusive of interest and costs.

18. Your orator further avers that it is not liable for the payment of said license taxes attempted to be exacted by section 32 of said act, for the following reasons:

12 (*a*) Because said section 32 of said act violates the Constitution of the United States;

(*b*) Because said section of said act violates the constitution of the State of Alabama;

(*c*) Because said section of said act is an effort on the part of the State of Alabama to regulate commerce among the several states, in violation of the third clause of Section 8 of Article 1 of the Constitution of the United States;

(*d*) Because said section of said act violates that clause of Section 1 of the 14th Amendment of the Constitution of the United States providing that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

(*e*) Because said section of said act violates that clause of section 1 of the 14th Amendment of the Constitution of the United States, providing that no state shall make or enforce any law which shall deprive any person of life, liberty, or property, without due process of law.

(*f*) Because said section of said act violates that clause of section 1 of the 14th Amendment of the Constitution of the United States, providing that no state shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws;

(*g*) Because in the administration of said section of said act orator is denied the equal protection of the laws, in violation of that clause of section 1 of the Fourteenth Amendment of the Constitution of the United States, providing that no state shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws;

(*h*) Because it is expressly provided by said section that it shall not apply to merchants selling sewing machines at their regularly established places of business, and your orator is a merchant within the meaning of said provision, and therefore not liable for the taxes attempted to be imposed by said section.

Premises considered, your orator prays that this court will take jurisdiction of this cause, made by the foregoing bill of complaint; and that the said Robt. C. Brickell, Attorney General of the State of Alabama, C. Brooks Smith, Auditor of the State of Alabama, and the said J. Lee Long, J. B. Powell, and A. A. Evans, the members of and who compose the said State Tax Commission of Ala-

13 bama, J. B. Gaston Judge of Probate of Montgomery County, Alabama, and Jno. C. Hardaway, Tax Commissioner of Montgomery County, Alabama, H. T. Benton, Judge of Probate of Russell County, Alabama, and J. E. Owens, Tax Commissioner of Russell County, Alabama, J. N. Stanford, Judge of Probate of Wilcox County, Alabama, and T. F. Lovell, Tax Commissioner of Wil-

cox County, Alabama, be made parties defendant thereto, and that summons issue out of this court to said defendants, requiring them to appear and plead, answer, or demur to this bill of complaint within the time fixed by law and the rules of this court; that a temporary restraining order or a temporary writ of injunction be made by your Honor restraining and enjoining the said defendants and each of them, and all other officers, agents, and employees of the State of Alabama from executing their threats as hereinabove set forth, to commence proceedings looking to the arrest of orator's said agents, managers, and employees, who may conduct its business in the several counties of the State of Alabama, and commanding and enjoining the said defendants and each of them from coercing, arresting, or attempting in any way or manner, by citation or otherwise, to enfore the payment of the said privilege or license taxes, pending the final determination of this cause; and that the said defendants, H. T. Benton, Judge of Probate, and J. E. Owens, Tax Commissioner, may be specially enjoined and restrained from proceeding further with said criminal prosecution so instituted against said W. B. Ector and G. H. Edwards; that on the final hearing your Honor will make such temporary restraining order or injunction perpetual, and will thereby restrain and enjoin said defendants, and each of them, and all other officers, agents and employees of the State of Alabama from issuing or causing any citation to be issued, and from commencing, or cause- any civil proceeding or criminal proceeding to be commenced looking to the arrest of orator's said agents, managers, and employees, in an effort to collect said license or privilege taxes, and from attempting in any way or manner, by citation or otherwise, to coerce the payment of the same, and from making any arrest or bringing any civil suits, or causing any arrest to be made, or suits to be instituted, or proceeding further with any criminal prosecutions or civil suits or proceedings of any nature, now pending against your orator, or against any of its agents and employees.

And your orator prays for all such other, further and different relief as in equity and good conscience it may be entitled to
14 receive; and orator prays for general relief.

And as in duty bound orator will ever pray, etc.

TYSON, WILSON & MARTIN,
Solicitors for Complainant.

FOOT-NOTE.—Said defendants and each of them are required to answer the allegations contained in the foregoing bill of complaint, from paragraph 1 to paragraph 17, both inclusive, but answer under oath by each of said defendants is expressly waived.

TYSON, WILSON & MARTIN,
Solicitors for Complainant.

STATE OF ALABAMA,
Mobile County:

Before the undersigned authority personally appeared Neander Crane, who being by me first duly sworn deposes and says that he is the duly authorized agent of the Singer Sewing Machine Company in the State of Alabama; that he has read the foregoing bill of complaint, and has authority to make this affidavit on behalf of the complainant, and that the averments contained in said bill of complaint are true to the best of my knowledge and belief.

NEANDER CRANE.

Sworn and subscribed before me, this 26th day of February, 1912. 1912.

[SEAL.] A. C. TONSMEIRE.
Notary Public, Mobile County, Alabama.

15 EXHIBIT NUMBER 1 TO BILL OF COMPLAINT.

ALABAMA.

Statement showing the Counties worked by the several Stores located in Alabama, also the small stores operated under the larger stores; the State and County License, and Wagon State and County License with Probate Judge's fee, which would be paid by Singer Sewing Machine Company under Section 32 of the Legislature of Alabama approved March 31, 1911.

Store.	County.	Substores.	State & Co. license exacted under clause 1 of Sec. 32, with probate fee.	State & County wagon & team license exacted under clause 2 of Sec. 32, with probate fee.		Total State & County license; also wagon & team license and fees.
				No	Amt.	
Anniston	Calhoun	Piedmont	75.50	3	114.00	189.50
	Cleburne		75.50	1	38.00	113.50
	Randolph		75.50	2	76.00	151.50
	St. Clair		75.50	1	38.00	113.50
Birmingham	Jefferson	Ensley	75.50	27	1,026.00	1,101.50
	Blount		75.50	1	38.00	113.50
Gadsden	Etowah		75.50	3	114.00	189.50
	Cherokee		75.50	2	76.00	151.50
	Marshall		75.50	1	38.00	113.50
	DeKalb	Fort Payne	75.50	1	38.00	113.50
Huntsville	Madison		75.50	2	76.00	151.50
	Lauderdale	Florence	75.50	1	38.00	113.50
	Lawrence		75.50	1	38.00	113.50
	Colbert		75.50	3	114.00	189.50
	Jackson		75.50	1	38.00	113.50
	Cullman		75.50	1	38.00	113.50
	Morgan	New Decatur	75.50	1	38.00	113.50
16	Limestone		75.50	1	38.00	113.50
Jasper	Walker		75.50	4	152.00	227.50
	Fayette		75.50	1	38.00	113.50
	Lamar		75.50	1	38.00	113.50
	Marion		75.50	1	38.00	113.50
	Winston		75.50	1	38.00	113.50
	Franklin		75.50	1	38.00	113.50
Talladega	Talladega		75.50	4	152.00	227.50
	Shelby		75.50	2	76.00	151.50
	Coosa		75.50	1	38.00	113.50
	Clay		75.50	1	38.00	113.50
Dothan	Houston	Columbia	75.50	3	114.00	189.50
	Henry		75.50	2	76.00	151.50
	Geneva	Hartford	75.50	2	76.00	151.50
	Dale	Ozark	75.50	3	114.00	189.50
	Coffee	Enterprise, Elba	75.50	2	76.00	151.50

Statement Showing Counties Worked, etc.—Continued.

Store.	County.	Substores.	State & Co license exacted under clause 1 of Sec. 32, with probate fee.	State & County wagon & team license exacted under clause 2 of Sec. 32, with probate fee.		Total State & County license; also wagon & team license and fees.
				No.	Amt.	
Greenville.....	Butler.....	.....	75 50	2	76.00	151.50
	Conecuh.....	.....	75.50	2	76.00	151.50
	Monroe.....	.....	75.50	1	38.00	113.50
	Covington....	Andalusia.. / Florala....	75.50	3	114.00	189.50
Mobile.....	Mobile.....	.....	75.50	2	76.00	151.50
	Baldwin.....	Bay Minette..	75.50	2	76.00	151.50
	Washington..	.....	75.50	2	76 00	151.50
	Clark.....	.....	75.50	2	76.00	151.50
	Choctaw.....	.....	75.50	1	38.00	113.50
17 Selma.....	Dallas	.....	75.50	4	152.00	227.50
	Lowndes	.....	75.50	1	38 00	113.50
	Perry.....	Marion.....	75.50	2	76.00	151.50
	Marengo.....	Demopolis....	75.50	2	76 00	151.50
	Greene.....	.....	75.50	1	38.00	113.50
	Hale	Greensboro....	75.50	1	38.00	113.50
	Sumter.....	.....	75.50	1	38.00	113.50
	Wilcox.....	.....	75.50	4	152.00	227.50
Troy.....	Bullock.....	.....	75.50	4	152.00	227.50
	Barbour.....	Eufaula.....	75 50	3	114.00	189.50
	Pike.....	.....	75.50	2	76.00	151.50
	Crenshaw. ...	.....	75.50	2	76.00	151.50
Bessemer.....	Bibb	West Blocton .	75.50	2	76.00	151.50
	Tuscaloosa....	Tuscaloosa....	75.50	3	114.00	189.50
	Pickens.....	.....	75.50	1	38.00	113.50
Montgomery...	Montgomery..	.....	75.50	8	304.00	379.50
	Elmore.....	.....	75 50	2	76.00	151.50
	Autauga.....	Prattville.....	75.50	2	76.00	151.50
	Chilton.....	.....	75 50	2	76.00	151.50
	Lee	Opelika.....	75.50	5	190.00	265.50
	Macon.....	Tuskegee.....	75.50	3	114.00	189.50
	Chambers....	.....	75.50	3	114.00	189.50
	Tallapoosa....	.....	75.50	3	114.00	189.50
Pensacola, Fla..	Escambia.. .	Brewton.....	75.50	3	114.00	189.50
Columbus, Ga..	Russell	.....	75.50	2	76 00	151.50
			$5,058.50	165	$6,270.00	$11,328.50

Filed February 26th, A. D. 1912.

RICHARD JONES, *Clerk.*

18 *Demurrers to Original Bill of Complaint and to Bill as Amended.*

In the District Court of the United States for the Southern Division of the Southern District of Alabama. In Equity.

SINGER SEWING MACHINE CO., Complainant,
vs.
ROBT. C. BRICKELL, as Attorney General of the State of Alabama, et al., Defendants.

Come the defendants in the above entitled cause and demur to the complaint filed against them therein and for grounds of demurrer set down and assign.

1. There is no equity in the bill.

2. The bill shows upon its face that the defendants are properly demanding of the complainant the licenses as alleged in the bill.

3. The bill shows upon its face that the business conducted by the complainant in Alabama is not interstate commerce, but is intrastate commerce.

4. The bill shows upon its face that the business conducted by the complainant in Alabama is interstate commerce and not intrastate commerce except in the county of Russell.

5. The bill shows upon its face that the complainant is liable for the license taxes imposed under the provisions of section 32 of an Act approved March 31, 1911.

6. The bill shows upon its face that the complainant is liable for the tax imposed under section 33 F of an Act approved March 31, 1911.

7. The bill shows upon its face that the servants, agents or employés of the complainant are liable for violation of — 7712 of the Criminal Code of Alabama by carrying on business in this State without having paid the taxes prescribed by sections 32 and 33 F of an Act approved March 31, 1911.

19 8. The bill of complaint shows upon its face that section 32 of the Act of March 31, 1911, does not violate the Constitution of the United States.

9. The bill shows upon its face that section 32 of said Act approved March 31, 1911, does not violate the Constitution of the State of Alabama.

10. The bill shows upon its face that said section 32 of said Act approved March 31, 1911, is not an effort of the State of Alabama to regulate commerce among the several states in violation of the third clause of Section 8 of Article 1 of the Constitution of the United States.

11. The bill shows upon its face that section 32 of said Act approved March 31, 1911, does not deprive any person of life, liberty or property without due process of law.

12. The bill shows upon its face that section 32 of said Act of

March 31, 1911, does not deny to any person within the jurisdiction of the State of Alabama the equal protection of the law.

13. Said bill shows upon its face that section 32 of the Act of March 31, 1911, applies equally to all persons, firms or corporations of the same class.

14. It does not appear from said bill that the complainant is in any manner denied the equal protection of the law.

15. It does not appear from said bill how or in what manner the complainant is deprived of the equal protection of the laws by any act of the State of Alabama, or any of its officers charged with the enforcement of its laws.

16. It appears from said act that the complainant is not within the class of merchants excepted by the provisions of section 32 of said Act of March 31, 1911.

17. It appears from the facts recited in the bill of complaint that the complainant is not a merchant selling from *his* regularly established place of business within the meaning of the provisions of section 32 of said Act of March 31, 1911.

And defendants here now interpose separately to paragraph 6 of the bill of complaint the same grounds of demurrer numbered 1 to 17, separately and severally as interposed to the bill as a whole.

And defendants here interpose to all of said bill, except paragraph 6 thereof, the same grounds of demurrer separately and severally as above interposed to the bill as a whole.

ROBERT C. BRICKELL,
Attorney General, Solicitor for Defendants.

Filed to original bill of complaint April 6, 1912.
RICHARD JONES, *Clerk.*

Filed to bill of complaint as amended December 2, 1912.
RICHARD JONES, *Clerk.*

STATE OF ALABAMA,
Montgomery County:

Before me, Katherine Collins, a Notary Public in and for said County and State, personally appeared Robert C. Brickell, — being by me first duly sworn, deposes and says that he is solicitor for the defendants in the above entitled cause, and that the foregoing demurrers are not interposed for delay, but are in his opinion, as such solicitor, well taken.

ROBERT C. BRICKELL.

Sworn to and subscribed before me this 5th day of April, 1912.
KATHERINE COLLINS,
Notary Public.

Filed to bill as amended December 2nd, 1912.
RICHARD JONES, *Clerk.*

21 *Agreement for Submission of Cause on Demurrers to Original Bill of Complaint.*

In the District Court of the United States for the Southern Division of the Southern District of Alabama. In Equity.

SINGER SEWING MACHINE COMPANY
vs.
ROBERT C. BRICKELL, as Attorney General, et al.

In this cause it is agreed that the same may be now submitted to the court on written briefs on the demurrer of the defendants to the bill of complaint.

This the 24th day of September 1912.

TYSON, WILSON & MARTIN,
Solicitors for Complainant.
ROBERT C. BRICKELL,
Solicitor for Defendants.

Filed September 30, 1912.

RICHARD JONES, *Clerk.*

Opinion on Demurrers to Original Bill of Complaint.

District Court of the United States for the Southern District of Alabama, Southern Division.

No. 2. In Equity.

SINGER SEWING MACHINE COMPANY
vs.
ROBERT C. BRICKELL, as Attorney General of the State of Alabama, et al.

Tyson, Wilson & Martin, of Montgomery, Alabama, for complainant.

Robert C. Brickell, Attorney General of the State of Alabama, for defendants.

TOULMIN, *Judge:*

This is a bill filed against Robert C. Brickell, as Attorney General of the State of Alabama, and others, to enjoin the proposed enforcement against Complainant of Section 32 of an "Act to Further Provide for the Revenues of the State of Alabama," approved
22 March 31st, 1911, which is as follows:

"SEC. 32. Sewing Machines.—Each person, firm, or corporation selling or delivering sewing machines, either in person or through agents, shall pay Fifty Dollars annually, for each county in which they may sell or deliver said articles, and for each wagon

and team used in delivering or displaying the same, an additional sum in each county of Twenty-five dollars annually, but this section shall not apply to merchants selling the above enumerated articles at their regularly established places of business."

The bill alleges that Complainant ought not to be subjected to, and is not liable for the payment of the taxes provided for therein, upon the grounds that, under the state of facts set forth in the bill, it comes within the excepting clause of said section and is, therefore, exempt from its operation; further, that said section of the Act in question is unconstitutional, in that, in its administration, it would violate the State and Federal Constitutions, particularly Section 1 of the 14th Amendment of the Constitution of the United States providing that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws. And the bill alleges that the said section is an effort on the part of the State of Alabama to regulate inter-state commerce, in violation of the third clause of Section 8 of Article 1 of the Constitution of the United States.

Defendants demur to said bill and maintain that the facts therein set forth do not show that Complainant is exempt from the payment of said taxes under the excepting proviso; nor do they show that said Section 32 is repugnant to the State Constitution or the Constitution of the United States in the particulars alleged.

The bill, among other things, sets forth the following state of facts; Complainant, a foreign corporation organized under the laws of New Jersey, duly authorized to transact its business in the State of Alabama, has established some thirty-six regular places of business, or stores, throughout the State, in various towns and cities, and engages wholly in the business of buying and selling sewing machines, parts thereof to remedy defects or breakage, and sewing machine accessories such as oil, needles, etc.; which goods and wares, as above described, are kept at its said stores, for sale to the general public.

With the exception of the County of Russell, the business
23 of Complainant in all the counties of the State of Alabama is conducted as follows: "Some of the sewing machines sold by it in the State are delivered to its salesmen at its regularly established places of business, and placed aboard wagons and teams at such places of business, and then taken by *its* salesmen through the rural districts of the State of Alabama, and sold from such wagons and teams, and, in some instances, delivery to the purchasers is made contemporaneously with the sale, and in other instances such salesmen use the machines so carried about on such wagons displaying them as sample machines, taking orders for other machines, which orders are returned by such salesmen to its regularly established places of business in the State of Alabama, . . . , as aforesaid, and there accepted or rejected, and if accepted, the machines are forwarded to the purchaser on such orders; . . . that Complainant also sells sewing machines at its regularly established places

of business in said counties, as aforesaid, and delivers such sewing machines to purchasers by using wagons and teams. . . ." Complainant has in its employ one hundred and ninety-seven sewing machine agents and employees in the State of Alabama, and has and is using one hundred and sixty-five wagons and teams in the State of Alabama in so displaying, selling and delivering such sewing machines.

It appears from the allegations of the bill that the complainant is a merchant engaged in the business of selling and delivering sewing machines in the State of Alabama, and that it has many regularly established places of business within said state; and that it also has a regularly established place of business in Columbus, Georgia, which city adjoins Russell County, Alabama, on the east.

Said Section 32 provides that, "Each person, firm or corporation selling or delivering sewing machines, either in person or through agents, shall pay Fifty Dollars annually for each county in which they may sell or deliver said articles and for each wagon and team used in delivering or displaying the same an additional sum in each county of twenty-five dollars annually."

It provides, however, that this section shall not apply to merchants selling the above enumerated articles at their regularly established places of business.

In so far as the selling of sewing machines by the complainant at its regularly established places of business is concerned, said section does not apply to it. But it appears that it is selling and delivering sewing machines from wagons and teams by agents through the rural districts of the state and in many counties therein. It is then liable for the tax exacted by the statute under consideration, unless that statute is declared to be violate of the state or federal constitutions. The complainant is engaged in selling sewing machines both at its fixed places of business and from wagons and teams by agents who, as sale-men, sell the same and deliver them contemporaneously with the sale. It seems to me that the complainant thus became liable for both taxes required by the statute to be paid, assuming the statute to be constitutional.

In the Quartlebaum case, 79th Ala. 1, the statute then under consideration provided that every sewing machine company
24 selling sewing machines either themselves or by their agents, and all persons who engage in the business of selling sewing machines, shall pay the state a tax for each county in which they may so sell, but when merchants engaged in a general business keep sewing machines, as a part of their stock in trade, they shall not be required to pay the tax therein provided. Quartlebaum dealt only in sewing machines and sold them in different counties in the State. The Supreme Court held that he was not a merchant engaged in general business, and as he did not come within the exception made by the statute he was liable for the tax imposed.

In Ballou v. The State, 87 Ala. 144, in considering a revenue statute which provided that, each sewing machine company selling sewing machines, either in person or through agents, and all persons who engage in the business of selling sewing machines, shall

pay to the state twenty-five dollars for each county in which they may sell, the court said:

"There is an exception in favor of merchants engaged in a general business, which is only material as showing that the Legislature exacted a license only for those who, it was contemplated, would be itinerant, going from county to county."

As I understand the contention of the learned counsel for complainant, it is that the tax in question is exacted only for those who are "itinerant dealers"; "that the statute is only intended to reach that character of persons." An itinerant is defined as one who travels about, as declared by the court in the Ballou Case, supra, "going from county to county."

The statute does not apply to merchants who sell sewing machines at their regularly established places of business, denoting nearness, present at, as at their house or store. In my judgment, it does not except from its application those who have regularly established places of business, but who also sell and deliver sewing machines from wagons and teams away from their established places of business, leaving them behind and traveling about "from county to county,"—"itinerant dealers" in the rural districts of the state. In my opinion, the bill shows these facts to exist.

The Supreme Court, in the Quartlebaum case, supra, said:

"When sewing machine companies sell sewing machines in any locality, they do it as a business." 79 Ala. 4.

It seems to me that there is a clear distinction between persons selling sewing machines at regularly established places of
25 business, and selling and delivering such articles from wagons and teams traveling about over the country, "going from county to county." They are two entirely distinct occupations. It may be difficult to distinguish these classes in principle, but the power of the Legislature to make this discrimination has not been questioned. Cook v. Marshall Co. 196 U. S. 261-274; Armour Pkg. Co., 200 U. S. 226; Connolly v. Union etc. 184 U. S. 540; Quartlebaum v. State, 79 Ala. 4.

I think it cannot be successfully claimed that it is beyond legislative power to make its classification of occupations.

Authorities, supra.

The Supreme Court of the United States, in The Oil Co. v. Texas, 217 U. S. 114, said: "The 14th Amendment of the Constitution of the United States was not intended to cripple the taxing power of the State or to impose upon them any iron rule of taxation. This court will not speculate as to the motive of a state in adopting taxing laws, but assumes that it was adopted in good faith. A state may prescribe any system of taxation it seems best, and it may without violating the 14th Amendment classify occupations, imposing a tax on some and not on others, so long as it treats equally all in the same class."

An occupation tax on all dealers in sewing machines does not deprive dealers in those articles of their property without due process of law, or deny them the equal protection of the law, because a

similar tax is not imposed on dealers in other articles. The Oil Co. v. Texas, supra.

The statute makes no distinction among persons selling sewing machines. The burden of the present tax falls equally on every person, firm or corporation selling sewing machines, and an additional tax on every such person for each wagon and team used in delivering or displaying the same.

As I construe the statute, it imposes a license tax on every person selling sewing machines, for each county in which he may sell said articles; and it imposes an additional license tax on each person for each wagon and team used in delivering said sewing machines in such county. One tax is for the privilege of engaging in the business of selling sewing machines, and the other is for the privilege of using a wagon and team in delivering or displaying sewing machines. These taxes are imposed upon the business of selling, and upon the business of delivering or displaying sewing machines by the use of wagons and teams. The two businesses may be engaged in by one and the same person, or by different persons. In the case at bar, the two occupations are engaged in by the same person, but that makes no difference in the principle involved. The Legislature has seen proper to classify them and to impose a tax upon each, which we have seen it has, under its taxing power, the right to do. In the Herzberg case, cited by complainant's
26 counsel, the court held that the tax was not imposed upon the business, but solely upon the manner in which a party may conduct the business. I do not consider the cases at all alike. The case cited was where the Legislature undertook to tax the manner in which a party may conduct his business as the same related to the compensation of his employees.

On the facts alleged in paragraph 6 of the bill, as to the conduct of the business of complainant in Russell County, Section 32 of the Statute under consideration has no application, the sales made to buyers in Russell County being made at complainant's regularly established place of business in Columbus, Georgia, and the articles sold delivered to the buyers in Russell County, Alabama. Said facts, in my judgment, show a case of interstate commerce. 153 U. S. 289.

The unconstitutionality of said section, even if conceded, would not operate to bring the complainant within the class not intended by it. Ballou v. State, 87 Ala. 144.

The Supreme Court of the United States, in the Oil Co. v. Texas, supra, said: "The Federal Court cannot interfere with the enforcement of the statute simply because it may disapprove its terms, or question the wisdom of its enactment, or because it cannot be sure as to the precise reasons inducing the State to enact it."

And the Supreme Court of Alabama has said:

Unless it is clear that the Legislature has transcended its authority it is our duty to declare its acts constitutional.

Sadler v. Langham, 34 Ala. 311; Stein v. Leeper, 78 Ala. 517.

The demurrers to the bill are sustained, and to each and every paragraph thereof, except as to paragraph 6 relating to Russell County, Alabama, as to which the demurrers and each of them are overruled.

Let a decree be entered accordingly.

Filed October 26, 1912.

RICHARD JONES, *Clerk.*

Decree on Demurrers to Original Bill.

District Court of the United States for the Southern District of Alabama, May Term, A. D. 1912.

In Equity. No. 2.

SINGER SEWING MACHINE COMPANY
versus
ROBERT C. BRICKELL, as Attorney General of the State of Alabama, and Others.

This cause coming on to be heard on the demurrers to the
27 bill of complaint and being submitted thereon and duly considered by the court, the court is of opinion that said demurrers to each paragraph of the bill except paragraph six (6) relating to Russell County, Alabama, are well taken and that said demurrers to said paragraph six (6) are not well taken: it is, therefore, ordered, adjudged and decreed by the court that said demurrers to each and every paragraph of the bill except said paragraph six (6) be and the same are hereby sustained, and that the demurrers and each of them to said paragraph six (6) be and the same are hereby overruled.

Made this 26th day of October A. D. 1912.

HARRY T. TOULMIN, *Judge.*

Filed and Entered October 26, 1912.

RICHARD JONES, *Clerk.*

Motion for Leave to Amend Bill.

In the District Court of the United States for the Southern Division of the Southern District of Alabama.

In Equity. No. 2.

SINGER SEWING MACHINE COMPANY, a Corporation,
vs.
ROBT. C. BRICKELL, Attorney General, et al.

To the Hon. Harry T. Toulmin, Judge of the District Court of the United States for the Southern Division of the Southern District of Alabama:

Now comes the complainant and begs leave to file the following amendment to its bill heretofore filed on the 26th day of February, 1912.

JNO. R. TYSON,
Attorney for Complainant.

Filed December 2, 1912.

RICHARD JONES, *Clerk.*

28 *Agreement for Order Allowing Amendment to Bill.*

In the District Court of the United States for the Southern Division of the Southern District of Alabama.

In Equity. No. 2.

SINGER SEWING MACHINE COMPANY, a Corporation,
vs.
ROBT. C. BRICKELL, Attorney General, et al.

I hereby agree that the Amendment to the Bill, a copy of which has been furnished me, may be allowed by the court.

ROBERT C. BRICKELL,
Attorney General.

Filed December 2, 1912.

RICHARD JONES, *Clerk.*

Order Allowing Amendment to Bill.

In the District Court of the United States for the Southern Division of the Southern District of Alabama, November Term, A. D. 1912.

In Equity. No. 2.

SINGER SEWING MACHINE COMPANY, a Corporation,
vs.
ROBT. C. BRICKELL, Attorney General, et al.

Upon consideration of the motion of complainant, the Singer Sewing Machine Company, to amend its bill in this cause, which Amendment is exhibited, I am of the opinion that said motion should be granted and the said Amendment allowed filed. It is, therefore, ordered and adjudged by the court that said motion be, and is hereby granted and the said Amendment allowed to be filed.

Done this the 2nd day of December, 1912.

HARRY T. TOULMIN,
United States Judge.

Filed and Entered December 2, 1912.

RICHARD JONES, *Clerk.*

29 *Amendment to Bill of Complaint.*

In the District Court of the United States for the Southern Division of the Southern District of Alabama.

In Equity. No. 2.

SINGER SEWING MACHINE COMPANY, a Corporation,
vs.
ROBT. C. BRICKELL, Attorney General, et al.

Now comes the complainant and by leave of the court first had and obtained, amends its bill of complaint in this cause as follows:

1. By striking out the fifth paragraph and inserting in lieu thereof the following:

Fifth.

Orator avers that on and prior to January 1, 1912, as well as at the time of the filing of this bill of complaint, orator conducted its business in all of the counties of the State of Alabama, except the County of Russell, in the following manner:

In each of said counties orator employs one or more persons who are residents of the county in which he is employed, for the purpose of making contracts for the sale and the renting of its machines in that county, and that county only; that machines are delivered to

such employees and placed aboard wagons and taken by such employees into the rural districts of his or their county, for the purpose of soliciting customers either to purchase or rent machines, and where a customer is found who desires to buy a machine such machine is delivered by the employee to such customer who either pays cash for it or executes an installment note in which the Company retains title to the machine, or executes an installment note secured by a mortgage upon the machine and such other property as the customer may offer as security. In the installment note and in the installment note secured by mortgage executed by the customer, there is an express provision that the transaction made by the employee is subject to the approval of the Company, and if not approved the installment note or installment note secured by the mortgage must be returned to the maker and the machine returned to the Company. If the employee makes a contract for the sale of a machine for cash, this is also subject to the approval or disapproval of the Company.

30 Orator avers that the final consummation of all sales of machines is at one of orator's established places of business. Orator further shows that the same employees engaged by it to make contracts for the sales of machines are also engaged by it to rent its machines and to collect the rents arising therefrom, and that the greater portion of their time is consumed in the renting of machines. Orator further avers that at least seventy per cent of the business done by it in Alabama is in the renting of its machines to the customers secured by its employees. That the machines that are rented are placed aboard wagons and taken by its employees into the rural districts of his or their county. Orator further avers that its employees are not selling or renting machines for or on their own account, but are simply making contracts for the sale and the renting of orator's machines subject to approval or rejection by orator.

Orator further shows that each of these employees is attached to some one of the stores, or places of business operated by orator, and the machines handled by him are sent to him from the place of business to which he is attached, or taken from said place of business by him upon the wagon which he drives; that orator also sells and rents machines at its regularly established places of business, and delivers such machines to purchasers or renters by the use of wagons and teams; that in those counties where it has established places of business, in making delivery of sewing machines that have been sold or rented at its places of business, orator uses the same employees who use the same wagons and teams that are used by them in carrying machines into the rural districts of the county.

That all notes, mortgages and rental contracts taken by an employee of the company must be sent by such employee for approval to the store to which he is attached, and all contracts for sales for cash must be reported to the store to which he is attached, for approval. If the transaction is approved by the Company the notes, mortgage and cash received by the employee are accepted and the sale finally consummated by the Company at one of its established

places of business. When the notes and mortgage mature they are delivered to an employee for collection, and are collected by him and the proceeds of same turned over by him to the Company at the store under which he is employed and to which he is attached.

31 Orator further avers that on January 1, 1912, it had in its employ, and now has, one hundred and ninety-seven employees in the State of Alabama, who are employed by its thirty-six stores, and attached thereto; and that one hundred and sixty-five of these employees use one hundred and sixty-five wagons and teams in the conduct of orator's business for the purpose alleged above,—each employee confining the use of the wagon and team used by him, to the county in which he resides, and in which he is employed to solicit business for orator.

That said machines so sold by orator are of the average weight of one hundred and thirty-five pounds each; that there are many other merchants in the State of Alabama who sell sewing machines of a different manufacture at their places of business, and the average weight of said machines is also about one hundred and thirty-five pounds; that on account of their weight it is the custom and practice of orator, and of such other merchants, to make delivery thereof by using wagons and teams, whether the sales are made at their places of business or away from them, and that it is impossible for orator to conduct its business without delivering machines sold by it to its customers, and for that purpose it is compelled to use wagons and teams.

2. By striking out the sixth paragraph and inserting in lieu thereof, the following:

Sixth.

Your orator further avers that it also operates a regularly established place of business in the City of Columbus, Georgia, and there keeps for sale to the public sewing machines and other articles of the class and character particularly mentioned in paragraph four of this bill of complaint; that in connection with said place of business of your orator, it did on January 1, 1912, and does at this time, employ W. B. Ector and G. H. Edwards to sell and deliver its sewing machines and accessories in Russell County, Alabama, which county adjoins the Georgia state line; that your orator operated its said place of business at Columbus, Georgia, and in connection therewith conducted its business in said County of Russell for some years prior to January 1st, 1912, and as a result thereof your orator acquired a large and valuable trade in the sale and delivery of sewing machines in the said County of Russell; that during the year 1911 the

32 gross value of the sewing machines so sold by your orator in the said County of Russell, through its said place of business in the City of Columbus, Georgia, was largely in excess of the sum of Five Thousand Dollars, and that the right of your orator to carry on and conduct its said business in said County of Russell is a valuable right, and exceeds exclusive of interest and costs, the sum or value of Five Thousand Dollars; that your orator does not sell or deliver any sewing machines or accessories in said County of Russell

except in the following manner, viz: Its said employees use wagons and teams in going about and displaying sample sewing machines and by the use thereof obtain orders for sewing machines and accessories, and such orders, when so received by said salesmen, are transmitted by them to your orator at Columbus, Georgia, for its acceptance or rejection, and if accepted, such machines or other articles so ordered are taken out of its stock of goods, wares, and merchandise at its said place of business in Columbus, Georgia, and there placed aboard wagons drawn by teams and then delivered by means of such wagons and teams to the purchasers in said Russell County.

3. By striking out the thirteenth paragraph and inserting in lieu thereof the following:

Thirteenth.

Orator further avers that after January 1, 1912, on which date the taxes exacted by Section 32 of said Act of March 31, 1911, became due, your orator was advised by the defendants, Rob't C. Brickell and C. Brooks Smith, acting in their official capacity, as aforesaid, that they and the defendants, J. Lee Long, A. A. Evans and J. B. Powell, acting in their official capacity as members of and composing the said State Tax Commission, would insist upon the payment by your orator of the said license taxes; and the said defendants, Rob't C. Brickell, C. Brooks Smith, J. Lee Long, A. A. Evans and J. B. Powell, as such officials, do now insist that said statute is a valid enactment, and that the same will be enforced against orator and its officers and employees immediately after the first day of February, 1912, (on which date said license taxes became delinquent under the laws of Alabama) in the event your orator does not pay the license taxes so exacted thereby; and that said
33 defendants will insist upon the payment by your orator of the said license taxes of Fifty Dollars in each of the sixty-seven counties of the State of Alabama in which orator sells or delivers sewing machines through its said employees, and the additional sum of Twenty-five Dollars to and for the use of each such county; and that the said defendants will also insist upon the payment by your orator of the said license tax of Twenty-five Dollars for each of the one hundred sixty-five wagons and teams so used by your orator in delivering or displaying sewing machines in the State of Alabama, and the additional sum of Twelve Dollars and Fifty cents to and for the use of the said counties of said state where such wagons and teams are operated; and your orator further avers that the said defendants further advised your orator that in the event orator failed to pay said license taxes that the Tax Commissioners of the several counties of the State of Alabama, would be instructed by the said Tax Commission to cause citations to issue to this defendant pursuant to Section 2245 of the Code of Alabama, to show cause before the Judges of Probate of the several counties of the State of Alabama, which such license taxes should not be paid, which, in the event of your orator's liability therefor, would add a penalty of ten per cent to the amount thereof, as the fees or commissions due said Tax Commissioners for causing such citations to issue; and said defend-

ants further advised your orator that in the event orator failed or refused, in obedience to such citations, to take out and pay for such licenses, its employees would be arrested and imprisoned from day to day, until they paid such license taxes, or ceased to engage in such business.

4. By striking out the fourteenth paragraph and inserting in lieu thereof, the following:

Fourteenth.

Your orator further avers that pursuant to the threats so made by said defendants as hereinabove alleged, and in accordance with their instructions, the said T. F. Lovell, Tax Commissioner of Wilcox County, Alabama, and Jno. C. Hardaway, Tax Commissioner of Montgomery County, Alabama, are preparing to cause such citations to issue to this defendant to show cause before said J. N. Stanford and J. B. Gaston, the Judges of Probate respectively of said
34 counties of Wilcox and Montgomery, why such license taxes should not be paid; and that such citations have actually been issued by said J. E. Owens, Tax Commissioner of said County of Russell, as hereinafter alleged; that in the event such citations are issued to your orator by said Judge of Probate, it could only appear before said Judges of Probate and make known to them that your orator is not liable for said taxes for the reasons mentioned in this bill of complaint; that said Judges of Probate have no authority or power under the laws of Alabama to determine your orator's liability therefor; that such Judges of Probate and said Tax Commissioners in making effort to coerce the payment of said license taxes, are governed and controlled by the opinion and advice of the said Rob't C. Brickell, as Attorney General, and your orator could, therefore, have no protection on account of any cause that it might show before said Judges of Probate for the non-payment of said taxes; that by reason of the advice so given to said tax officers by said defendant, Rob't C. Brickell, Attorney General, and on account of the said instructions from said State Tax Commission to the County Tax Commissioners, your orator avers that said County Tax Commissioners will institute, or cause to be instituted, criminal proceedings against your orator's said employees, which proceedings are instituted by the making of an affidavit before a court having jurisdiction of the offense, whereupon, under the laws of Alabama, a warrant of arrest issues for such employees.

5. By striking out the fifteenth paragraph and inserting in lieu thereof, the following:

Fifteenth.

Your orator further avers that it is advised that said Section 32 of said Act is illegal and void, and incapable of enforcement against your orator and its employees for the reasons hereinafter alleged in this bill of complaint; and it avers that it ought not to be required to pay such taxes; that since the establishment by orator of its business in the State of Alabama it has been growing and developing each year, and that it has now a large and profitable business established in said State of great value to it, towit, of the sum of Twenty-

Five Thousand Dollars or more; that the right of your orator to carry on and conduct its said business in the several counties of the State of Alabama, exceeds, exclusive of interest and costs, the
35 sum or value of Ten Thousand Dollars; that in the conduct of its business orator is entirely dependent on its employees, and that in the event the said defendants carry out their said threats to cause the arrest and imprisonment of your orator's said employees, orator avers that they will quit its service and that it will be unable to employ others to take their places, and your orator's established business in the several counties of the State of Alabama will be seriously interfered with, if not wholly destroyed; that your orator will be damaged thereby largely in excess of Ten Thousand Dollars, exclusive of interest and costs, which damage, your orator avers, will be irreparable and continued unless the said defendants are enjoined and restrained from causing the arrest of your orator's employees, but orator avers that even though the defendants and others who would execute such threats might be liable in damages to your orator in the event it should be finally held that orator is not liable for said taxes, it will be difficult, if not impracticable, to ascertain and estimate, with even proximate certainty, the losses and damage which would result to orator therefrom; that in the event of the execution of such threats by the defendants, the employees of orator will be liable to arrest and imprisonment from day to day, and orator will be required to defend many prosecutions which will result in much vexatious litigation and in the expenditure of a large sum of money in the way of costs and expenses; that the questions of law and of fact in each of said prosecutions will be the same, viz: The Liability vel non of your orator for the payment of the taxes attempted to be exacted under said statute, and the defenses which might be interposed by your orator's employees in such prosecutions will be common to each of them, and will involve like legal questions; for and on account of which your orator avers that it is entitled to resort to a court of equity to protect its established business and its right to conduct the same, from such interference, and also thereby to prevent a multiplicity of such criminal prosecutions.

6. By striking out the sixteenth paragraph and inserting in lieu thereof, the following:

Sixteenth.

Orator further avers that it has at all times since the year 1907 been engaged in business in the State of Alabama in the man-
36 ner heretofore set up in this bill of complaint; that beginning with the year 1907 a license tax was exacted in and by subdivision 58 of Section 2361 of the Code of Alabama of 1907, until superseded by Section 32 of the Act of March 31, 1911, in the following language:

"Each person, firm, or corporation selling or delivering sewing machines, either in person or through agents, and for each person, firm, or corporation who engages in the business of selling or delivering lightning rods, stoves, ranges, buggies or other vehicles, twenty-five dollars annually for each county in which they might sell or deliver said articles; and for each wagon and team used in

delivering or displaying the same an additional sum in each county of ten dollars annually; but this section shall not apply to merchants selling the above enumerated articles at their regularly established places of business."

Orator avers that it complied with said statute and paid said license taxes for the years 1907, 1908, 1909, 1910 and 1911, for the right to so sell and deliver sewing machines by its employees, as well as for the right to use wagons and teams in delivering or displaying the same, although orator avers that it was not liable for the payment of such taxes, for the reasons set up in this bill of complaint; that during each of said years a number of other merchants within the State of Alabama, to wit, three hundred, did sell sewing machines at and from their regularly established places of business, and did use wagons and teams in delivering the same when sold from their places of business; and orator avers that at the time of filing this bill of complaint there were a like number of such merchants engaged in the State of Alabama in conducting their business in such manner, but your orator avers that since the year 1907, and at this time the defendants, in the administration of said Code section and in the administration of said section 32 of said act of 1911, did not exact and do not intend to exact said license taxes from any of such merchants so conducting their business in that manner; thereby working an injustice and an illegal discrimination against your orator, and resulting in the denial to your orator of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

7. By striking out the seventeenth paragraph and inserting in lieu thereof, the following:

Seventeenth.

Orator further avers that on, to wit, February 17, 1912, the defendant, J. E. Owens, as tax commissioner of Russell County, Alabama, reported to the defendant, H. T. Benton, as judge of
37 probate of Russell County, that your orator's said employees, W. B. Ector and G. H. Edwards, had not taken out a license for engaging in the business of selling sewing machines in said County of Russell; and thereupon the said H. T. Benton, as such judge of probate, issued citations to said Ector and Edwards to appear before him on Feb. 20, 1912, and take out such licenses; that said Ector and Edwards did appear before said judge of probate on the return day of such citations and declined to take out such licenses, for the reasons mentioned in said bill of complaint, whereupon said Owens made affidavit and caused warrants to issue for the arrest of said Ector and Edwards, charging them with engaging in said business of selling sewing machines in violation of Section 7712 of the Code of Alabama; that said Ector and Edwards were arrested under said warrants and each of them made bond for their appearance before the County Court of said County of Russell on March 4, 1912, to answer said charge; that unless the further prosecution of such proceedings against said Ector and Edwards is enjoined by this court, the business of your orator in said County of

Russell will be seriously interfered with, if not wholly destroyed, and said Ector and Edwards will quit the employment of your orator, and orator will thereby lose large sums of money, certainly more than Five Thousand Dollars, exclusive of interest and costs.

8. By striking out the prayer of said bill and inserting in lieu thereof the following:

Premises considered, your orator prays that this court will take jurisdiction of this cause, made by the foregoing bill of complaint; and that the said Robt. C. Brickell, Attorney General of the State of Alabama, C. Brooks Smith, Auditor of the State of Alabama, and the said J. Lee Long, J. B. Powell, and A. A. Evans, the members of and who compose the said Tax Commission of Alabama, J. B. Gaston, Judge of Probate of Montgomery County, Alabama, and Jno. C. Hardaway, Tax Commissioner of Montgomery County, Alabama, H. T. Benton, Judge of Probate of Russell County, Alabama, and J. E. Owens, Tax Commissioner of Russell County, Alabama, J. N. Stanford, Judge of Probate of Wilcox County, Alabama, and T. F. Lovell, Tax Commissioner of Wilcox County, Alabama, be made parties defendant hereto, and that summons issue out of this court to said defendants, requiring them to appear and
38 plead, answer, or demur to this bill of complaint within the time fixed by law and the rules of this court; that a temporary restraining order or a temporary writ of injunction be made *to* your Honor restraining and enjoining the said defendants and each of them, and all other officers, agents, and employees of the State of Alabama from executing their threats as hereinabove set forth, to commence proceedings looking to the arrest of orator's said employees, who may conduct its business in the several counties of the State of Alabama, and commanding and enjoining the said defendants and each of them from coercing, arresting, or attempting in any way or manner, by citation or otherwise, to enforce the payment of the said privilege or license taxes, pending the final determination of this cause; and that the said defendants, H. T. Benton, Judge of Probate, and J. E. Owens, Tax Commissioner, may be specially enjoined and restrained from proceeding further with said criminal prosecution so instituted against said W. B. Ector and G. H. Edwards; that on the final hearing your Honor will make such temporary restraining order or injunction perpetual, and will thereby restrain and enjoin said defendants, and each of them, and all other officers, agents, and employees of the State of Alabama from issuing or causing any citation to be issued, and from commencing, or causing any civil proceeding or criminal proceeding to be commenced looking to the arrest of orator's said employees, in an effort to collect said license or privilege taxes, and from attempting in any way or manner, by citation or otherwise, to coerce the payment of the same, and from making any arrest or bringing any civil suits, or causing any arrest to be made, or suits to be instituted, or proceeding further with any criminal prosecutions or civil suits or proceedings of any nature, now pending against your orator, or against any of its employees.

And your orator prays for all such other, further and different

relief as in equity and good conscience it may be entitled to receive, and orator prays for general relief.

And as in duty bound orator will ever pray, etc.

JOHN R. TYSON,
Attorney for Complainant.

39 STATE OF ALABAMA,
Montgomery County:

Before me, Mary M. Hale, a Notary Public in and for said State and County, personally appeared Jno. F. Kane, who, being by me duly sworn, deposes and says: That he is the duly authorized agent of the Singer Sewing Machine Company in the State of Alabama; that he has read the foregoing amendment to the bill of complaint in this cause and has authority to make this affidavit on behalf of the complainant and that the averments contained in said amendment are true to the best of his knowledge and belief.

JNO. F. KANE.

Subscribed and sworn to before me, this the 30th day of Nov. 1912.

MARY M. HALE,
Notary Public.

Filed by leave of the court December 2, 1912.

RICHARD JONES, *Clerk.*

Agreement for Submission of Cause on Demurrers to Bill of Complaint as Amended.

In the District Court of the United States for the Southern Division of the Southern District of Alabama.

In Equity.

SINGER SEWING MACHINE COMPANY, a Corporation.
vs.
ROB'T C. BRICKELL, Attorney General, et al.

It is agreed by the Attorneys of Record in this case that, upon the allowance of the Amendment to the Bill by the Court, it is submitted to the Court upon the demurrers heretofore filed to the original bill, which are marked refiled to the bill as amended.

ROB'T C. BRICKELL,
Attorney General.
JOHN R. TYSON,
Attorney for Complainant.

Filed December 2, 1912.

RICHARD JONES, *Clerk.*

40 *Decree on Demurrers to Bill as Amended.*

District Court of the United States for the Southern District of Alabama, November Term, A. D. 1912.

In Equity. No. 2.

SINGER SEWING MACHINE COMPANY
versus
ROB'T C. BRICKELL, as Attorney General of the State of Alabama, and Others.

This cause coming on to be heard on the demurrers to the Bill of Complaint as amended and being submitted thereon and duly considered by the court, it is ordered, adjudged and decreed by the court that said demurrers to each and every paragraph of the bill as amended except as to paragraph 6 relating to Russell County, Alabama, be and the same are hereby sustained, and that the demurrers and each of them to said paragraph 6, and demurrer numbered 4, be and the same are hereby overruled.

Made this 5th day of December A. D. 1912.

HARRY T. TOULMIN, *Judge.*

Filed and Entered December 5th 1912.

RICHARD JONES, *Clerk.*

41 *Answer of Defendants to Paragraph Six of Bill as Amended.*

In the District Court of the United States for the Southern Division of the Southern District of Alabama.

In Equity. No. 2.

SINGER SEWING MACHINE COMPANY, a Corporation,
vs.
ROB'T C. BRICKELL, Attorney General of the State of Alabama; C. Brooks Smith, Auditor of the State of Alabama; J. Lee Long, J. B. Powell, and A. A. Evans, Composing the State Tax Commission of Alabama; J. B. Gaston, Judge of Probate, Montgomery County, Alabama; Jno. C. Hardaway, Tax Commissioner of Montgomery County, Alabama; H. T. Benton, Judge of Probate, Russell County, Alabama; J. E. Owens, Tax Commissioner of Russell County, Alabama; J. N. Stanford, Judge of Probate, Wilcox County, Alabama, and T. F. Lovell, Tax Commissioner of Wilcox County, Alabama.

Come the defendants in the above entitled cause, and for answer to paragraph six of the bill as amended, said paragraph being all of

said bill to which demurrers were not sustained, *and for answer thereto* says:

That the defendants admit the allegations of said paragraph six.

ROBERT C. BRICKELL,
Attorney for Defendants.

Filed January 17, A. D. 1913.

RICHARD JONES, *Clerk.*

Agreement to Submit Case Upon Bill and Answer for Final Decree.

In the District Court of the United States for the Southern Division of the Southern District of Alabama.

In Equity. No. 2.

SINGER SEWING MACHINE COMPANY, a Corporation,
vs.
ROB'T C. BRICKELL, Attorney General of the State of Alabama, et al.

It is agreed by the attorneys of record in this case that this cause may be submitted upon bill and answer for final decree.

JNO. R. TYSON,
Attorney for Complainant.
ROBERT C. BRICKELL,
Attorney for Respondents.

Filed January 17, A. D. 1913.

RICHARD JONES, *Clerk.*

42 *Final Decree.*

In the District Court of the United States for the Southern Division of the Southern District of Alabama, November Term A. D. 1912.

In Equity. No. 2.

SINGER SEWING MACHINE COMPANY, a Corporation,
vs.
ROB'T C. BRICKELL, Attorney General of the State of Alabama, et al.

This cause coming on to be heard, and it appearing to the court that on the 26th day of October, 1912, a decree was rendered sustaining the demurrers to each and every paragraph of the original bill except paragraph number six, and to that paragraph the demurrers were overruled.

And it further appearing that on the 2nd day of December, 1912, the complainant amended its bill by leave of the court first had and obtained, to which the defendants re-filed their demurrers, and

again the cause was submitted upon the bill as amended, and the demurrers thereto, and upon such submission the court, on the 5th day of December, 1912, sustained said demurrers to each and every paragraph of the bill as amended, except as to paragraph number six, relating to Russell County, Alabama, and overruled the demurrers and each of them to said paragraph six, and the complainant declining to amend its bill further, and to plead further, it is ordered, adjudged and decreed that the bill as amended, in so far as it seeks relief against the payment of the license taxes in all the counties of the State of Alabama except Russell County, be, and the same is hereby dismissed out of this court, and the complainant denied the relief sought in said bill as amended, except as to the license tax sought to be collected of it in Russell County.

And the cause being now submitted upon the bill as amended and the answer thereto admitting the truth of the allegations of said paragraph, upon consideration the court is of the opinion that the complainant is entitled to the relief prayed as to Russell County.

It is, therefore, ordered, adjudged and decreed that the complainant is entitled to the relief prayed for as to Russell County, and that the defendants and each of them, and all other officers, agents, and employees of the State of Alabama, be, and are hereby re-
43 strained and enjoined from issuing or causing any citation to issue, and from commencing or causing any civil proceeding or criminal proceeding to be commenced looking to the arrest of complainant's employees in an effort to collect the license or privilege tax attempted to be imposed by Section 32 of the Act entitled "An Act to further provide for the revenue of the State of Alabama," approved March 31, 1911, and from attempting in any way or manner, by citation or otherwise, to coerce the payment of the same, and from making any arrest or bringing any civil suits, or causing any arrest to be made, or suits to be instituted or proceeding further with any criminal prosecution or civil suits or proceeding of any kind now pending against complainant, or against any of its employees.

It is therefore, ordered, adjudged and decreed that complainant be taxed with the costs of this suit, and that the defendants have and recover of the complainant the costs for which let execution issue.

Made this January 17, A. D. 1913.

HARRY T. TOULMIN, *Judge.*

Filed and Entered January 17, A. D. 1913.

RICHARD JONES, *Clerk.*

Assignment of Errors.

In the District Court of the United States for the Southern Division of the Southern District of Alabama.

In Equity. No. 2.

SINGER SEWING MACHINE COMPANY, a Corporation,

vs.

ROBT. C. BRICKELL, Attorney General of the State of Alabama; C. Brooks Smith, Auditor of the State of Alabama; J. Lee Long, J. B. Powell and A. A. Evans, Composing the State Tax Commission of Alabama; J. B. Gaston, Judge of Probate, Montgomery County, Alabama; Jno. C. Hardaway, Tax Commissioner of Montgomery County, Ala.; H. T. Benton, Judge of Probate, Russell County, Ala.; J. E. Owens, Tax Commissioner of Russell County, Ala.; J. N. Stanford, Judge of Probate, Wilcox County, Ala., and T. F. Lovell, Tax Commissioner of Wilcox County, Alabama.

Comes the complainant, Singer Sewing Machine Company, a corporation, and files the following assignment of errors:

1. That the United States District Court in and for the Southern Division of the Southern District of Alabama, erred in sus-
44 taining the respondents' demurrer to each and every paragraph of complainant's bill except paragraph six relating to Russell County, Alabama.

2. The United States District Court in and for the Southern Division of the Southern District of Alabama, erred in sustaining the respondents' demurrer to each and every paragraph of complainant's bill as amended, except as to paragraph six relating to Russell County, Alabama.

3. Said court erred in holding that complainant is not a merchant selling sewing machines at its regularly established places of business in Alabama, within the last clause of Section 32 which is in these words: "but this section shall not apply to merchants selling the above enumerated articles at their regularly established places of business."

4. Said court erred in holding that Section 32 of the Act entitled "An Act to further provide for the revenues of the State of Alabama," approved March 31, 1911, is constitutional.

5. Said court erred in holding that complainant is liable to the tax imposed by Section 32 of the Act entitled "An Act to further provided for the revenues of the State of Alabama," approved March 31, 1911, in that said Act is unconstitutional and void for that:

(*a.*) Said section is an effort to regulate interstate commerce among the several states in violation of the third clause of Section 8 of Article 1 of the Constitution of the United States.

(*b.*) Said Section violates that clause of Section 1 of the Fourteenth Amendment of the Constitution of the United States which

provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

(*c.*) Said Section violates that clause of Section 1 of the Fourteenth Amendment of the Constitution of the United States which provides that no state shall make or enforce any law which shall deprive any person of life, liberty or property without due process of law.

(*d.*) Said Section violates that clause of Section 1 of the Fourteenth Amendment of the Constitution of the United States which provides that no state shall make or enforce any law which
45 shall deny to any person within its jurisdiction the equal protection of the laws.

6. Said court erred in rendering the final decree of date the 17th day of January, 1913, dismissing complainant's bill as amended as to the relief sought against the payment of the license taxes in all the counties of the State of Alabama except Russell County, and denying to complainant relief except as to Russell County, Alabama.

Wherefore said complainant, Singer Sewing Machine Company, a corporation, prays that said decree of said court be reversed, and that the said court be directed to grant the relief prayed in said bill of complaint.

JNO. R. TYSON,
Counsel for Complainant.

Filed January 17, A. D. 1913.

RICHARD JONES, *Clerk.*

Petition for Appeal and Order Allowing Same.

In the District Court of the United States for the Southern Division of the Southern District of Alabama.

In Equity. No. 2.

SINGER SEWING MACHINE COMPANY, a Corporation,
vs.
ROBT. C. BRICKELL, Attorney General of the State of Alabama; C. Brooks Smith, Auditor of the State of Alabama; J. Lee Long, J. B. Powell and A. A. Evans, Composing the State Tax Commission of Alabama; J. B. Gaston, Judge of Probate, Montgomery County, Alabama; Jno. C. Hardaway, Tax Commissioner of Montgomery County, Ala.; H. T. Benton, Judge of Probate, Russell County, Ala.; J. E. Owens, Tax Commissioner of Russell County, Ala.; J. N. Stanford, Judge of Probate, Wilcox County, Ala., and T. F. Lovell, Tax Commissioner of Wilcox County, Ala.

To the Honorable Harry T. Toulmin, Judge of the District Court of the United States for the Southern Division of the Southern District of Alabama:

The above named complainant, Singer Sewing Machine Company, a corporation, conceiving itself aggrieved by the final order

and decree made and entered in the above named court in the above entitled cause, wherein and whereby its bill of complaint, as amended, was dismissed, does hereby appeal from said order
46 and decree to the United States Supreme Court for the reasons set forth in the assignment of errors which is herewith filed, and prays that this petition for said appeal may be allowed and that a transcript of the record, proceedings and papers upon which said final order and decree was made, duly authenticated, be sent to the United States Supreme Court.

And your petitioner further prays that the proper order touching the security to be required of it to perfect its appeal be made.

JNO. R. TYSON,
Solicitor for Complainant.

Petition granted and appeal allowed, and the decree in this case will be superseded upon giving bond conditioned as required by law in the sum of $1,000.00.

HARRY T. TOULMIN,
Judge United States District Court.

Filed January 17, A. D. 1913, and Entered on Minutes of the Court.

RICHARD JONES, *Clerk.*

Bond on Appeal.

In the District Court of the United States for the Southern Division of the Southern District of Alabama.

In Equity. No. 2.

SINGER SEWING MACHINE COMPANY, a Corporation,
vs.
ROBT. C. BRICKELL, Attorney General of the State of Alabama; C. Brooks Smith, Auditor of the State of Alabama; J. Lee Long, J. B. Powell and A. A. Evans, Composing the State Tax Commission of Alabama; J. B. Gaston, Judge of Probate, Montgomery County, Alabama; Jno. C. Hardaway, Tax Commissioner of Montgomery County, Ala.; H. T. Benton, Judge of Probate, Russell County, Ala.; J. E. Owens, Tax Commissioner of Russell County, Ala.; J. N. Stanford, Judge of Probate, Wilcox County, Ala., and T. F. Lovell, Tax Commissioner of Wilcox County, Ala.

Know all men by these presents, that we, Singer Sewing Machine Company, a Corporation, as principal, and Alabama Fidelity & Casualty Company, as surety, are held and firmly bound unto Robt. C. Brickell, Attorney General of the State of Alabama, C. Brooks Smith, Auditor of the State of Alabama, J. Lee Long, J. B. Powell and A. A. Evans, composing the State Tax Commission of
47 Alabama, J. B. Gaston, Judge of Probate Montgomery County, Alabama, Jno. C. Hardaway, Tax Commissioner of

Montgomery County, Ala., J. N. Stanford, Judge of Probate Wilcox County, Ala., and T. F. Lovell, Tax Commissioner of Wilcox County, Ala., in the sum of One Thousand Dollars, for the payment of which well and truly to be made, they bind themselves, their successors and assigns.

In witness whereof, we have hereunto set our hands and seals this the 11th day of January, 1913.

Whereas the above bounden Singer Sewing Machine Company, a corporation, hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit on the 17th day of January, 1913, by the District Court of the United States for the Southern Division of the Southern District of Alabama.

Now, therefore, the condition of the above obligation is such that if the said Singer Sewing Machine Company, a corporation, shall prosecute its appeal to effect and answer all damages and costs if it fail to make *iys* plea good, then the above obligation to be void, otherwise to be and remain in full force and effect.

SINGER SEWING MACHINE COMPANY,
By C. G. LAMBERT,
Attorney-in-Fact and General Agent.

[SEAL.] ALABAMA FIDELITY & CASUALTY COMPANY,
By N. C. PARKER, *Underwriters' Manager;*
By J. W. KELLY, *Secretary.*

Witness as to signature of C. G. Lambert as Attorney in Fact and General Agent Singer Sewing Machine Company, this the 11th day of January, 1913.

[SEAL.] EDWARD CRUSSELLE,
Notary Public, Fulton Co., Ga.

Taken and approved and ordered filed, this the 17th day of January, 1913.

HARRY T. TOULMIN,
Judge United States District Court.

Filed January 17, A. D. 1913.

RICHARD JONES, *Clerk.*

48 *Citation.*

UNITED STATES OF AMERICA:

District Court of the United States for the Southern Division of the Southern District of Alabama.

To Robt. C. Brickell, Attorney General of the State of Alabama; C. Brooks Smith, Auditor of the State of Alabama; J. Lee Long, J. B. Powell and A. A. Evans, composing the State Tax Commission of Alabama; J. B. Gaston, Judge of Probate Montgomery County, Alabama; Jno. C. Hardaway, Tax Commissioner of Montgomery County, Alabama; H. T. Benton, Judge of Probate Russell County, Alabama; J. E. Owens, Tax Commissioner of Russell County, Alabama; J. N. Stanford, Judge of Probate Wilcox County, Ala., and T. F. Lovell, Tax Commissioner of Wilcox County, Ala., Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden in the City of Washington, D. C., on the 15th day of February, 1913, pursuant to an appeal allowed by the District Court of the United States for the Southern Division of the Southern District of Alabama, wherein the Singer Sewing Machine Company, a corporation, is Appellant, and you are Appellees, to show cause, if any there be, why the decree rendered against the said Appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done in the premises.

Witness the Honorable Edward D. White, Chief Justice of the United States, this the 17th day of January, in the year of our Lord One Thousand Nine Hundred and Thirteen, and of the Independence of the United States of America the One Hundred and Thirty-Eighth.

HARRY T. TOULMIN,
Judge United States District Court.

I hereby accept service of the within citation. This the 17th day of January, 1913.

ROBERT C. BRICKELL,
Attorney General, Solicitor for Appellees.

Filed January 17, A. D. 1913.

RICHARD JONES, *Clerk.*

49 *Certificate.*

UNITED STATES OF AMERICA:

District Court of the United States for the Southern District of Alabama.

I, Richard Jones, clerk of said court, do hereby certify that the foregoing forty-eight pages, numbered from 1 to 48, contain a true and correct transcript of the record and proceedings had in said court in Equity Cause No. 2, wherein Singer Sewing Machine Company a corporation, is complainant, and Robert C. Brickell as Attorney General of the State of Alabama, and others, are defendants, as fully as the same remain of record and file in my office as such clerk.

In Testimony Whereof, I hereto set my hand and affix the seal of said court at the city of Mobile, Alabama, this 7th day of February, A. D. 1913.

[Seal United States District Court, Southern Dis. of Alabama.]

RICH'D JONES, *Clerk.*

Endorsed on cover: File No. 23,548. , S. Alabama D. C. U. S. Term No. 973. The Singer Sewing Machine Company, appellant, vs. Robert C. Brickell, attorney general of the State of Alabama; C. Brooks Smith, auditor of the State of Alabama; J. Lee Long et al., composing the State Tax Commission of Alabama et al. Filed February 17th, 1913. File No. 23,548.

No. 458.

SUPREME COURT OF THE UNITED STATES

[redacted]

[redacted]

THE SINGER SEWING MACHINE COMPANY,

Appellant,

vs.

ROBERT C. BRICKELL,

Attorney General of the State of Alabama,

C. BROOKS SMITH,

Auditor of the State of Alabama,

ET ALS.,

Appellees.

ARGUMENT FOR APPELLANT BY J. R. TYSON.

[redacted]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1912.

No. 973.

THE SINGER SEWING MACHINE COMPANY,
Appellant,

vs.

ROBERT C. BRICKELL,
Attorney General of the State of Alabama,
C. BROOKS SMITH,
Auditor of the State of Alabama,
ET ALS.,
Appellees.

ARGUMENT FOR APPELLANT BY J. R. TYSON.

STATEMENT OF THE CASE.

The appellant, a corporation under the laws of New Jersey, carrying on mercantile business at localities in many counties in the State of Alabama, in the way of selling and renting sewing machines, from stores as well as by wagons going from place to place in the respective counties in which its stores are located, filed the bill in this case against the appellees, agents for the State having in charge the enforcement of its tax laws, to enjoin the enforcement of the State tax under Section 32 of an Act of the Revenue laws of the State, approved March 11, 1911, imposing taxes which is in the words and figures following, to-wit:

> "Sec. 32. Sewing Machines. Each person, firm or corporation selling or delivering sewing machines, either in person or through agents, shall pay fifty dollars annually, for each county in which they may sell or deliver said articles. And for each wagon and team used in delivering or displaying the same an additional sum in each county of twenty-five dollars annually; but this section shall not apply to merchants selling the above enumerated articles at their regularly established places of business."

Record p. 5.

And also to enjoin the enforcement of the county tax of 50 per cent of the State tax named in said section 32, which was imposed by all the counties of the State under authority of section 33 of the same Revenue law which is in these words:

"The Courts of County Commissioners or other Courts of like jurisdiction, except in the cases otherwise provided, may at any regular or special term add to the license and franchise taxes herein levied, such amounts not exceeding fifty per cent of such taxes for county purposes, as, in its judgment, may be necessary, and no license shall be issued without payment of such percentage for county purposes."

Record 5.

The bill avers the qualification under the state law of the appellant as a foreign corporation to do business in the state, the adverse citizenship of the plaintiffs and defendants, and that the latter as agents, collectors and officers of the State are about to put into execution the penal laws of the State against plaintiffs and its employees and agents, unless it pays the taxes imposed by said laws, in a way to break up its business in the State, which business is described in the 4th, 5th and 6th paragraphs of the bill as amended as follows:

4. Orator further avers that after it so qualified to engage in business in the State of Alabama, it established a number of places of business in the State of Alabama, which number was increased from time to time, so that on Jan. 1, 1912, your orator had established in thirty counties in the State of Alabama thirty-six regular places of business, or stores, in the counties, towns, and cities shown by the schedule or list hereto attached as part hereof, and marked "Exhibit No. 1"; which schedule also shows the amount of the license taxes attempted to be exacted of orator under section 32 of the Act of March 31, 1911, hereinafter referred

to; all of which stores are still operated by your orator; that orator buys sewing machines, and parts of sewing machines to supply breakage and defects therein, and needles, sewing machine oil, darning cotton, and sewing machine accessories of a large variety, from without the State of Alabama, and ships or causes the same to be shipped to its said places of business in the State of Alabama, which goods, wares, and merchandise orator keeps at its said regularly established places of business in the State of Alabama for sale to the general public.

Record 2.

5. Orator avers that on and prior to January 1, 1912, as well as at the time of the filing of this bill of complaint, orator conducted its business in all of the counties of the State of Alabama, except the County of Russell, in the following manner:

In each of said counties orator employs one or more persons who are residents of the county in which he is employed, for the purpose of making contracts for the sale and the renting of its machines in that county, and that county only; that machines are delivered to such employees and placed aboard wagons and taken by such employees into the rural districts of his or their county, for the purpose of soliciting customers either to purchase or rent machines, and where a customer is found who desires to buy a machine such machine is delivered by the employee to such customer who either pays cash for it or executes an installment note in which the Company retains title to the machine, or executes an installment note secured by a mortgage upon the machine and such other property as the customer may offer as security. In the install-

ment note and in the installment note secured by mortgage executed by the customer, there is an express provision that the transaction made by the employee is subject to the approval of the Company, and if not approved the installment note or installment note secured by the mortgage must be returned to the maker and the machine returned to the Company. If the employee makes a contract for the sale of a machine for cash, this is also subject to the approval or disapproval of the Company.

Orator avers that the final consummation of all sales of machines is at one of orator's established places of business. Orator further shows that the same employees engaged by it to make contracts for the sale of machines are also engaged by it to rent its machines and to collect the rent arising therefrom, and that the greater portion of their time is consumed in the renting of machines. Orator further avers that at least seventy per cent of the business done by it in Alabama is in the renting of its machines to the customers secured by its employees. That the machines that are rented are placed aboard wagons and taken by its employees into the rural districts of his or their county. Orator further avers that its employees are not selling or renting machines for or on their own account, but are simply making contracts for the sale and the renting of orator's machines subject to approval or rejection by orator.

Orator further shows that each of these employees is attached to some one of the stores, or places of business operated by orator, and the machines handdled by him are sent to him from the place of business to which he is attached, or taken from said place of business by him upon the wagon which he drives; that orator also sells and rents machines at

its regularly established places of business, and delivers such machines to purchasers or renters by the use of wagons and teams; that in those counties where it has established places of business, in making delivery of sewing machines that have been sold or rented at its places of business, orator uses the same employees who use the same wagons and teams are used by them in carrying machines into the rural districts of the county.

That all notes, mortgages and rental contracts taken by an employee of the company must be sent by such employee for approval to the store to which he is attached, and all contracts for sales for cash must be reported to the store to which he is attached, for approval. If the transaction is approved by the Company the notes, mortgage and cash received by the employee are accepted and the sale finally consummated by the Company at one of its established places of business. When the notes and mortgage mature they are delivered to an employee for collection, and are collected by him and the proceeds of same turned over by him to the Company at the store under which he is employed and to which he is attached.

Orator further avers that on January 1, 1912, it had in its employ, and now has, one hundred and ninety-seven employees in the State of Alabama, who are employed by its thirty-six stores, and attached thereto; and that one hundred and sixty-five of these employees use one hundred and sixty-five wagons and teams in the conduct of orator's business for the purpose alleged above,—each employee confining the use of the wagon and team used by him, to the county in which he resides, and in which he is employed to solicit business for orator.

That said machines so sold by orator are of the

average weight of one hundred and thirty-five pounds each; that there are many other merchants in the State of Alabama who sell sewing machines of a different manufacture at their places of business, and the average weight of said machines is also about one hundred and thirty-five pounds; that on account of their weight it is the custom and practice of orator, and of such other merchants, to make delivery thereof by using wagons and teams, whether the sales are made at their places of business or away from them, and that it is impossible for orator to conduct its business without delivering machines sold by it to its customers, and for that purpose it is compelled to use wagons and teams.

Record 25.

6. Your orator further avers that it also operates a regularly established place of business in the City of Columbus, Georgia, and there keeps for sale to the public sewing machines and other articles of the class and character particularly mentioned in paragraph four of this bill of complaint; that in connection with said place of business of your orator, it did on January 1, 1912, and does at this time, employ W. B. Ector and G. H. Edwards to sell and deliver its sewing machines and accessories in Rusell county, Alabama, which county adjoins the Georgia state line; that your orator operated its said place of business at Columbus, Georgia, and in connection therewith conducted its business in said county of Russell for some years prior to January 1, 1912, and as a result thereof your orator acquired a large and valuable trade in the sale and delivery of sewing machines in the said County of Russell; that during the year 1911 the gross value

of the sewing machines so sold by your orator in the said County of Russell, through its said place of business in the City of Columbus, Georgia, was largely in excess of the sum of Five Thousand Dollars, and that the right of your orator to carry on and conduct its said business in said County of Russell is a valuable right, and exceeds exclusive of interest and costs, the sum or value of Five Thousand Dollars; that your orator does not sell or deliver any sewing machines or accessories in said County of Russell except in the following manner, viz: Its said employees use wagons and teams in going about and displaying sample sewing machines and by the use thereof obtain orders for sewing machines and accessories, and such orders, when so received by said salesmen, are transmitted by them to your orator at Columbus, Georgia, for its acceptance or rejection, and if accepted, such machines or other articles so ordered are taken out of its stock of goods, wares, and merchandise at its said place of business in Columbus, Georgia, and there placed aboard wagons drawn by teams and then delivered by means of such wagons and teams to the purchasers in said Russell County.

Record 27.

The bill sets forth fully the authority and machinery of enforcing the collection of the taxes and the penalty for every infraction of the law as set out in section 7712 of the Criminal Code of Alabama, which is in these words:

"7712. Engaging in or carrying on business without license. Any person who, after the fifteenth of January in any year, engages in or car-

ries on any business for which a license is required, without having taken out such license, must, on conviction, be fined three times the amount of the state license."

Record 7.

The appellant proceeds in its bill on the claim that the said tax law, section 32 set out above, violates the constitution of the United States in several respects, viz: That it is a regulation of interstate commerce, and that it violates the due process and equal protection and the privilege and immunity clauses of the Fourteenth Amendment; and also violates the Constitution of Alabama; and finally that the appellant is within the exception to the statute and that it thus has no application to it.

LAW POINTS.

1. Jurisdiction. This Court has jurisdiction of a direct appeal from the District Courts of the United States when "the constitution or law of a state is claimed to be in contravention of the Constitution of the United States."

Judicial Code, Sec. 238.

2. Although the appellant may insist that the law which is impeached has no application to his case, or that the *res* does not, for any reason, come within its terms, yet, if he insists *bona fide* that, though such defenses fail, the unconstitutionality of the law protects him, the Court has jurisdiction,

since "the question is (was) a substantial one, and is (was) directly presented, and its determination (is) required," unless other defenses succeed.

Heyl 227 US 518.

Smoot v. ~~Turner, decided 21 Jan. 1913.~~

3. When the constitutional question does not arise except on the condition of a preliminary question of general law being decided in favor of the appellant, then it cannot be said to be directly and necessarily involved and the Court has no jurisdiction, as in

Empire Co. v. Hanley, 205 U. S. 255;
Cosmopolitan M. Co. v. Walsh, 193 U. S. 460;
Casey v. H. & T. C. Ry., 150 U. S. 170;
Sloan v. U. S., 193 U. S., 614;
Muse v. Arlington H. Co., 168 U. S. 430.

4. But when the Constitutional point is directly presented and is necessarily involved in any decision against the appellant, though he may have preliminary points which might protect him without considering the Constitutional question, the Court has jurisdiction of the appeal, as is expressly decided in the Smoot case *supra*.

Penn M. Life Ins. Co. v. Austin, 168 U. S. 685;
Mayor, etc. v. Vicksburg, etc., 202 U. S. 453;
Field v. Barber Asphalt Co., 194 U. S. 618;
Burton v. United States, 196 U. S. 283;
Illinois Cent. R. R. v. McKendres, 203 U. S. 554.

And when the constitutional question is duly presented in the lower court "the jurisdiction of this Court does not de-

pend upon the question whether the right claimed under the Constitution of the United States has been upheld or denied in the Court below; and the jurisdiction of this Court is not limited to the Constitutional question, but extends to the whole case."

Holder v. Aultman, 169 U. S. 81-88;
Whitten v. Tomlinson, 160 U. S. 231-238;
Penn Ins. Co. v. Austin, 168 U. S. 685;
Loeb v. Columbia, etc., 179 U. S. 472;
Chappell v. United States, 160 U. S. 499-509;
Horner v. United States, No. 2, 143 U. S. 570-577.

5. When there is no full, adequate and complete remedy at law, there is an unqualified right to appeal to equity, and especially so when in that way only a multitude of ruinous and vexatious law suits, about a single matter, can be avoided.

Boyce v. Grundy, 3 Pet. 210;
Western Union T. Co. v. Andrews, 216 U. S. 165;
Ex parte Young, 209 U. S. 123;
Smyth v. Ames, 169 U. S. 466;
Walla Walla v. Water Co., 172 U. S. 1, 12;
Meyer v. Wells Fargo & Co., 223 U. S. 298;
3 L. R. A. Dig. U. S. C. Reports, page 2729.

6. The equal protection of the laws is denied when, all questions of police power being out of the way, a lawful business, or the use of property in a lawful way, is palpably and unjustly discriminated against in favor of other business or other use of the same property by the same or other owners.

A business may be taxed for revenue or may be forbidden or regulated under the police power, and so with the use

of property, but a business cannot be taxed on account of the manner of conducting it by one citizen while the same business conducted in a different and perhaps less efficient manner by other citizens is exempted. And so as to property. The use of *wagons and teams* for transporting sewing machines, for sale or display, cannot be taxed merely because they are used in such work while untaxed when not so used and when the same transportation and display may be effected without taxation in any other way.

Ala. Con. Coal Co. v. Herzberg, 55 South. 305;
City of Montgomery v. Kelly, 142 Ala. 552;
Mefford v. City of Sheffield, 148 Ala. 539;
Phoenix Carpet Co. v. State, 118 Ala. 143.

7. Legislation cannot restrict or coerce industry as to its channels from pure whimsicality, or from any motive disconnected from the due exercise of the police power and from taxation for revenue according to Constitutional formulas.

ib.;
Constitution of Alabama, Sec. 35.

8. A business or property cannot be taxed as a whole and then separately as to its constituents. As a tax on wagons and separately on the spokes of the wheels.

Montgomery v. Kelly, 142, Ala. 552;
Mefford v. Sheffield, 148 Ala. 539;
City of Mobile v. Richards, 98 Ala. 594;
Gambill v. Endrich Bros., 143 Ala. 506.

9. No state statute can stand which by its terms will burden or regulate interstate commerce. And the Courts cannot by judicial limitation preserve the statute in part by restricting its terms to a legitimate field of operation.

Civil Rights Cases, 109 U. S. 3;
United States v. Reese, 92 U. S. 214;
Howard v. Illinois Cent. R. Co., 207 U. S. 463;
Western Union T. Co. v. Kansas, 216 U. S. 1;
Crutcher v. Kentucky, 141 U. S. 47-62;
Norfolk & W. R. v. Pennsylvania, 136 U. S. 114-118;
Leloup v. Port of Mobile, 127 U. S. 640;
Galveston H., etc., R. Co. v. Texas, 210 U. S. 217;
Brimer v. Rebman, 138 U. S. 78-81;
Illinois Cent. R. Co. v. McKendree, 203 U. S. 514;
Butts v. Mar. & Mins. T. Co., 230 U. S. 126.

10. Contracts are made, and the "business of selling" is done, at the place where the contract receives the final assent of the mind which concludes the negotiation, converting it into a contract or sale.

Holder v. Aultman, 169 U. S. 81-88; 9 Cyc. 667.

ARGUMENT.

1. As to the question of the right of a direct appeal to this Court from the decree of the lower court no argument seems to be necessary, as on the face of the bill the whole and direct proposition is the unconstitutionality of the tax law of the State.

See law points 1, 2, 3, 4, *supra*.

2. As to the right to appeal to equity, by one suit, rather than to trust two hundred or more ineffectual suits at law *per annum,* during the pendency of the first suits determining the validity of the statute, it seems equally plain—such a course of procedure might here easily involve a thousand suits, before a finality would be reached, if the law's usual delays should prevail.

And, beyond this, the appellant would have to pay thousands of dollars to hundreds of different, and perhaps irresponsible, persons for a number of years (pending the test of liability) and then, if successful, be forced to bring an uncountable number of suits against successive collectors for a number of years in forty or more counties of the state to recover the money thus paid. Whereas every spark of litigation is extinguished in one suit in equity, in an inexpensive way (comparatively), and without the possibility of loss to any one.

There never was, it seems, a plainer case than this for the interposition of equity. There is no comparison as to the efficiency of the remedy at law and in equity.

See law point 5 *supra.*

INTERSTATE COMMERCE REGULATED.

When the Constitution of the United States was adopted the people entertained fears only of power in a central government, hence the Fifth Amendment of that instrument. There was no thought that the states would be untrue to their own citizens. But the prevailing standard of honesty and intelligence in the lawmakers of the Revolutionary period, is

hardly to be found now in state legislatures, which in this commercial age are not always free from the prevailing *auri sacra fames* and are not too broad to feel local and even individual influences suggesting wrong. The people now find their security only under the wing of the central government, which is too large to feel the force of mere individual or local influences subversive of justice. This change or growth in the social status gave birth to the Fourteenth Amendment of the Constitution which is now the *Palladium* of our Liberties.

The statute impeached in this case had the narrow motive of a desire to change the manner of conducting a lawful industry and to confine it to a channel profitable to local store keepers. Of course, we know that the motive of a legislature is not *per se* a legal objection to the law, but we may look at consequences, the ruin wrought by a storm, or an earthquake, to properly characterize the *res* or power effecting the destruction. And we have the undoubted right to insist that the formula or chart for our proposed ruin shall be impeccable.

By this we mean that those who are the victims of violence of any sort have the right to the security of a "storm cellar" if available and may insist upon an inspection of the warrant of execution in all cases. We have quoted the statute called in question here, but as it is short we read it again. It levied the following taxes:

> "Sec. 32. Sewing Machines.—Each person, firm or corporation selling or delivering sewing machines, either in person or through agents, shall pay fifty dollars annually, for each county in which they may sell or deliver said articles. And for each wag-

on and team used in delivering or displaying the same an additional sum in each county of twenty-five dollars annually, but this section shall not apply to merchants selling the above enumerated articles at their regularly established places of business."

Record 5.

The tax, it will be observed, is assessed against all persons, firms and corporations *in the world,* except merchants selling at stores, who personally or by any agency whatever, sell or deliver sewing machines in any county in the state. And not only is the tax levied on every person selling or delivering, but if the delivery is by wagon with a team attached there is an additional tax of $25 for the state and $12.50 for each county in which the wagon may be used for delivery; and not only this, but if a sewing machine is "displayed" in a wagon coming from Georgia, or any other state, and going through the 67 counties of the state, there is a tax on it of $25 in each country for the state and $12.50 for each county.

The very simple question here is: Does such a law by its necessary effect burden or tax interstate commerce? To ask the question, is to answer it. It is true the tax is on, or rather the prohibition relates to, a single article of commerce, and to a single means of transportation. But this does not alter or lessen the character of the tax. The schedule of items placed under a legislative bar is only scrutinized to see whether the articles are legitimate subjects of commerce.

Of course, it will be admitted that, since we are no longer *sans culottes,* sewing machines are not contraband.

And likewise it must be admitted that "wagons and teams"

still constitute a legitimate means of transportation notwithstanding the many modern inventions. And it cannot be denied that the interference and burden on interstate commerce may be directed against the merchandise or the mode of transportation or against both. Then the case here is that of a law declaring, that any person, firm or corporation may, free from all taxes sell, and deliver by wagon and team or otherwise, from established places of business sewing machines throughout the State; but that no person or firm or corporation can sell, through any of the means of interstate commerce, as by correspondence or by traveling salesmen, without paying these onerous taxes, and especially that no delivery shall be made by wagon and team without paying a heavy tax on such wagon and team in every county where a delivery is made.

> "It is the established doctrine of this court that a State may not in any form or under any guise, directly burden the prosecution of interstate commerce."

T. B. Co. v. Pigg, 217 U. S. p. 112.

In the matter of commerce the United States is a single nation and the commerce between the States is a unit.

Northern Securities Co. v. United tSates, 193 U. S. 336.

Alabama has an area of practically 52,000 square miles and a border of 1200 miles. All persons have a right to transport across any point of the frontier line of the State sewing machines by any means of transportation whatever and to display them and sell and deliver them, when sold out

of the State by railroad, motor vehicles, or wagons and teams or otherwise free of State taxation.

The law in question by its direct terms and its necessary operation, puts a burden on all such intercourse between Alabama and the rest of the United States and the world at large, so far as sewing machines are concerned. And it is too obvious to require argument that it is obnoxious to the commerce clause of the Constitution.

See Law points 9 *supra.*

The only question in this respect is, whether the appellant can raise the point, and whether the courts can come to the aid of the Legislature and write into the law the limitations on the language of the statute necessary to give it a legitimate field of operation. As to the first matter, of course, the appellant can insist that the law, as it stands and as it is sought to be enforced against it, requiring taxes and costs of over $11,000 *per annum,* on its combined *inter and intrastate* business in Alabama, to be paid, is void in law on account of its regulation of interstate commerce and on account of its denial to it of the equal protection of the laws.

8 Cyc. 787.

As to the other point, it is equally clear that the judiciary cannot do more than declare the law as it stands. The language here is plain, it is susceptible of but one interpretation, and that puts a burden on interstate commerce.

"In such cases," says this court in Western U. T. Co. v. Kansas, 216 U. S. p. 28, "the courts must sustain the su-

preme law of the land by declaring the statute unconstitutional and void."

The courts may and should interpret all dubious language, when possible, in a way to make the law constitutional, "but this does not imply, if the text of an act is unambiguous, that it may be re-written to accomplish that purpose." And even when the provisions of an act are separable, there is no right to disconnect them and hold some good and others bad unless it is clear that the Legislature would have enacted the law "with the unconstitutional provisions eliminated."

Civil Rights Cases, 109 U. S. 3;
United States v. Reese, 92 U. S. 214;
The Employers' Liability Cases, 207 U. S. 463-501;
Ill. Cent. R. v. McKendree, 203 U. S. 514;
Trade Mark Cases, 100 U. S. 99;
United States v. Ju Toy, 198 U. S. 153-263;
Butts v. Transportation Co., 230 U. S. 126.

We have then here a law which is palpably a prohibition in effect and not merely a *wise* regulation of interstate commerce and it, therefore, is void *in toto*.

In this case it appears that the appellant had a store in Columbus, Georgia, and operated across the Alabama line in Russell County in selling and displaying sewing machines in wagons with teams attached. The lower court graciously held that the statute would not operate in the County of Russell, but was otherwise a valid statute. It seems clear that the court could not sustain a statute which in its direct terms applied to all commerce by restricting it automatically to cases of actual interference with interstate dealings.

Statutes which impose taxes and penalties in the abstract will operate when the commerce actually develops and may anticipate and prevent any development. All such laws as will necessarily affect interstate commerce when it arises are void. We do not have to await actual results on actual commerce to pronounce them void. They are void when enacted, from their very nature, and, like a card-board house, have only to be called in question, in a case which is not moot and involves their application, to collapse into nothingness. And, of course, a statute of this character, which is void as a whole, from its unity of character, will as readily be so declared in a case in which only intrastate commerce may be actually involved as otherwise.

The lower court was thus clearly in error in limiting the invalidity of the statute to the dealing in Russell County.

Alabama has proximately 52,000 square miles of territory, the court limited the invalidity of the statute to 700 square miles. This might be sufficient to cover half the area of Rhode Island, but in Texas it would be infinitesimal. Laws cannot be thus limited as to territory. Nor can a statute which is a unit in language and operation as to all commerce be truncated by the courts so as to apply only to commerce which, in the language of Gibbons v. Ogden, 9 Wheat. 1, is "completely internal." The statute was void for all purposes because it operated by its terms on all commerce and could not be judicially amended to apply to intrastate commerce only.

Trade Mark Cases, 100 U. S. 82;
Butts v. M. & M. T. Co., 230 U. S. 127;
Civil Rights Cases, 109 U. S. 3.

EQUAL PROTECTION OF LAWS.

4. The law in question is equally obnoxious to the equal protection clause of the Fourteenth Amendment as it is to the Commerce Clause of the Constitution.

What is taxed by this law?

The tax is on the selling of *sewing machines,* or, if no sale in the State, on the *delivery of sewing machines,* by any means of transportation, or, if there is no sale or delivery, on the *displaying of sewing machines in wagons with teams* to them, but the law does not apply to sales made by merchants at regularly established places of business, meaning, it is assumed, in the State.

Now, all question of Police Power being out of the way, what right has the Legislature to classify "callings" for taxation by the mere difference in the manner of doing the same business? Here is A, for instance, who is not a merchant, in the sense of having a regularly established store as a place of business, but who deals in selling sewing machines. He obtains orders at prices agreed on, and contracts to deliver. We will suppose he buys himself or sells on commission, and that he deals with a great manufacturer or wholesaler in, or out of the State, or both. He buys and sells, or sells and delivers on commission a thousand machines. We will place B by his side who is a merchant with a regular established place of business and who sells and delivers 2000 sewing machines—or these numbers may be varied according to the facts.

Now by what theory is it that A can be taxed $50 for the State at large and $25 for the State for every county, and $25 for every county in which he sells or delivers his machines; and, further, for the State $25 for every wagon and

team in each county used in delivering machines and, further, for every county $12.50 for every such wagon and team so used, or used even for displaying machines, while B, doing identically the same business, it may be selling by correspondence and personal solicitation the same number of machines and delivering in the same way, is not taxed at all? The only difference between the two cases is, that A does not store his machines but receives them from the carrier, while B stores them and then distributes them from his warehouse.

If the business is the thing that is taxed in A's case, B cannot be exempted on any theory known to the law. The business of each we suppose to be equal in every respect—the only difference being that A has no store in which he sells, while B has.

It may be said B is taxable on his property and merchandise; but that is no answer, for A is supposed to pay taxes on all his property, whatever it may be, and it may be twice what B's is, and the business of selling is not, in either case, property. And B's property in machines is not taxable as property any sooner than the machines handled by A—in each case as soon as they cease the transit of commerce and become mingled with the other property of the citizen they are subject to taxation. We know of no principle whatever upon which A can be denied the equal protection of "equal laws" with B.

It cannot be found, we think, in any of the decisions of this court. Classification for taxation must appear to be based on some reasonable ground—"Something which bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection."

Gulf C. & S. Ry. v. Ellis, 165 U. S. 151;
Southern Ry. v. Greene, 216 U. S. 417;
Cotting v. K. C. S. Yards, 183 U. S. 79;
Connolly v. U. S. P. Co., 184 U. S. 560;
Reasoning of Mr. Justice Lamar in dissent 223 U. S., p. 64.

The unequal protection of the law is carried so far in this case, that the means of transportation—for the delivery of even an article of strict interstate commerce—for the *display* for purchase by an interstate drummer is not merely reasonably taxed but prohibited, if the means of transportation is a wagon and team, while transportation by auto-vehicles without teams is exempt.

This whole statute appears to have been drawn by an evil hand and eye and, certainly, by a consummate bungler in constitutional law.

It seems clear that the statute is open to the two objections of regulating interstate commerce and of denying to appellant the equal protection of the law.

THE STATUTE VIOLATES THE STATE CONSTITUTION.

5. The tax levied by this law is clearly not a police but revenue measure, and makes arbitrary discriminations. Selling sewing machines is the business, and it is taxed highly, and it may be in fact prohibitorily, when it is done by the use of wagons and teams, and not at all when done at stores. It is taxed highly and it may be in fact prohibitorily when done by correspondence and delivery direct from or by the carrier even and though interstate, and not at all when the

sale is made at a store. It is taxed, and it may be in fact prohibitorily, if it is done by a great manufacturer *in, or out of the State,* who, not being a merchant, sells through agents or otherwise to *store keepers* or *to widows* or to others—and especially if he uses so humble a means of transportation as a wagon and team, while the store keeper is not taxed at all.

Such abnormalities in legislation in times that are not revolutionary must find their apology in pure ignorance or in an undisclosed purpose to restrict or change the channels of trade to particular routes. The country or town store seems to have been intended as the beneficiary of this law.

If the business of buying and selling without a store, either on commission or otherwise, by correspondence or personal solicitation, by wagons and teams, or by other modes of delivery and display, is deleterious to the public in any way, the same business cannot be innocent when done at a store. And if it is lawful at a store the same identical business ought not to be coerced by discriminating taxes and penalties from its chosen channel to the route through the country cross-road stores. The patrons of sewing machines ought not to be forced to a market when there is one at hand more convenient; nor ought citizens doing a lawful business to be taxed out of it, by unjust discriminations intended as such or having that result, when their competitors doing the identical business are free from taxation.

Citizens do not have to appeal to the Constitution of the United States for protection against such unjust legislation, it is furnished nearer home.

In the case of Montgomery v. Kelly, 142 Ala. 552, the court said:

"The liberty which is so sedulously guarded by the Constitutions of the United States and of this and other states comprehends more than the mere freedom of personal restraint. It includes the right to pursue any useful and harmless occupation, and to conduct the business in the citizen's own way, without being discriminated against either by being prohibited from engaging in it or by being burdened with discriminative taxation. If it be allowed that an additional burden may be placed upon a merchant who chooses to advertise his business by offering a small gratuity to customers in the shape of these trading stamps, it would be equally lawful to place an extra burden on one who advertises his business in the papers, or one who offers, out of his own stock, a certain gratuity to every one purchasing goods to a certain amount, or one who erects a handsome sign in front of his store, etc."

And further:

"So long as his manner of conducting his business does not offend public morals and work an injury to the public, it is his constitutional right to pursue, on terms equal to that allowed to others in like business, even though his methods may have a tendency to draw trade to him, to the detriment of competitors."

And in conclusion the court said:

"This is such a palpable attempt under the guise of license tax to fix a penalty on the merchant for conducting his business in a certain way, that, under the authorities heretofore cited, we hold it to be unconstitutional and void."

Cons. of Ala. Secs. 1 and 35.

And in Alabama Consolidated Coal and Iron Co., 59 So. 305, the court speaking of Section 33a of the Revenue Act of 1911, which required merchants using trading stamps for accommodation of their employees and by which they received small gratuities, to pay a tax graduated on the number of employees, declared the law unconstitutional, saying:

> "It will be observed that this section does not impose a license tax upon persons, firms or corporations conducting stores or commissaries, but only upon those wherein the employees trade upon checks, orders or other devices. The tax is not, therefore, imposed upon the business or upon all engaged in a similar business, but is based solely upon the manner in which a party may conduct the business, and the foregoing section is repugnant to the State and Federal Constitutions, under the authority of City of Montgomery v. Kelly, 142 Ala. 552. This case was approvingly cited and explained in the case of Mefford v. City of Sheffield, 148 Ala. 543."

In the case at bar the statute under consideration, not only discriminates against all sales not made by merchants at their stores, (thus it may be prohibitory of all sales made otherwise, even by drummers for foreign persons), but goes so far as to tax any sort of delivery, even by interstate carriers, and even of interstate merchandise, in transit to the buyer, and beyond all this, divides up the business into its several parts by taxing the sale, the delivery, and the wagon and team hauling the article, and even the person driving the wagon, and at the same time exempts alike the merchant of the great de-

partment emporium and of the cross-roads country grocery from any tax whatever.

Of course, this is a manifest violation of the commerce clause and the equal protection clause of the Constitution of the Federal government, as pointed out. But it is also double taxation.

It is said by the Supreme Court of Alabama:

> "The legislature taxing the whole [as the business of selling sewing machines] cannot again tax the parts * * *. This would be such an arbitrary method of taxation as to be a violation of the Bill of Rights."

Cons. of Ala. Secs. 1 and 35.

Montgomery v. Kelly, 142 Ala. 552;
Mefford v. City of Sheffield, 148 Ala. 539;
City of Mobile v. Kraft, 94 Ala. 156;
Mayor, etc. v. Holezstein, 134 Ala. 636;
Gambill v. Henrich, 143 Ala. 506.

There is no solid objection to taxing a man's coffin, but the nails ought to be exempt.

Wagons and teams may be and are taxed as property, but no tax should be put on the owner for using them to take his family to church or to deliver interstate merchandise or to "display sewing machines."

The displaying of sewing machines is not in any catalogue of crimes; it is allowed to be done *at* stores, and *in* auto-vehicles and *in* wheel-barrows, and we see no reason why it should not be done in wagons with teams to them.

APPELLANT WITHIN EXCEPTION OF STATUTE.

6. The bill which was demurred to was amended, record 25 *et seq.*, and by the fifth clause it appears, that all sales of sewing machines are executory until they finally receive the approval of appellant *at* its regular established places of business, to-wit: its stores throughout various counties of the State, which are headquarters for all agents with their wagons and teams. And it appears that appellant is a merchant conducting a regular business at each of its said stores.

No sale is complete not even for cash until it is approved by an agent of appellant *at* one of these stores, and thus appellant is clearly within the exception of the statute.

The *lex loci contractus* is the law of all contracts and here, by the terms of the statute, the *locus* of the sale is the test of liability or of exemption from the tax.

It makes no difference what negotiation may be had, nor where it may take place, the contract remains executory or rather there is no contract until the final approval or acceptance of a proposal is made.

The case of Holder v. Aultman, 169 U. S. 81, is directly in point on a contract very much like those here involved. The question there arose on a suit against an agent for his default. The defense was that the contract was made in Michigan and was void under the laws of Michigan, because the plaintiff was a foreign corporation and had not complied with the laws of that State as to doing business therein, the statute declaring all contracts in such cases void. The reply was that the contract was finally concluded in Ohio, and that all business done in Michigan was executory until ap-

proved by the Ohio office. The court sustained the plaintiff's contention, saying:

> "But the final approval by the plaintiff itself was an act which according to the express stipulation of the parties, and in the contemplation of every person who affixed his signature to the paper, was a necessary step to complete the execution of the instrument by the plaintiff, and make it a valid and binding contract between the parties."
>
> 169 U. S. 91.

The bill says in the fifth paragraph, record 26:

> "That all notes, mortgages and rental contracts taken by an employee of the company must be sent by such employee for approval to the store to which he is attached, and all contracts for sales for cash must be reported to the store to which he is attached, for approval. If the transaction is approved by the Company the notes, mortgage and cash received by the employee are accepted and the sale finally consummated by the Company *at* one of its established places of business."

The demurrer admits this statement, and it shows that the venue of sales is in all cases at "the regularly established places of business" of the appellant, who is, therefore, within the beneficent exception of the statute and not liable to its extreme penalties, for there can be no doubt that the appellant is a merchant by virtue of its stock of goods at its stores from and out of which sales are constantly made.

> "All persons who keep for sale and sell any kind of chattel property at a fixed place are merchants."

Washburn v. City of Oshkoph, 60 Wis. 543;
19 N. W. 364;
5 Words & Phrases, 4482 *et seq.*

It thus finally appears, that the statute in question does not cover the appellant's case; that if it does the statute is void by the Constitution of Alabama; that if that is not sufficient it is void by the Constitution of the United States; and if that is not sufficient, and any further appeal could be made, we would say, it is void by the Law of God, *vigore rerum naturae,* ordaining the co-ordination of the burdens and benefits of association, which the laws only confirm.

JNO. R. TYSON,
Attorney for Appellant.

HENRY AXTELL PRINCE,
Of Counsel.

3

No. 458.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1913.

No. 458.

THE SINGER SEWING MACHINE COMPANY,
Appellant,

v.

ROBERT C. BRICKELL, ATTORNEY GENERAL OF THE STATE OF ALABAMA, *ET ALS.*,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

BRIEF FOR APPELLEES.

The Brown Printing Company, Montgomery, Ala.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1913.

No. 458.

THE SINGER SEWING MACHINE COMPANY,
Appellant,

v.

ROBERT C. BRICKELL, ATTORNEY GENERAL OF THE STATE OF ALABAMA, *ET ALS.*,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

The questions involved in this case are so well stated in the opinion of the District Judge filed in connection with his decree on the demurrers that we shall content ourselves with using the statement made by him, which is as follows:

"This is a bill filed against Robert C. Brickell, as Attorney General of the State of Alabama, and others, to enjoin the proposed enforcement against Complainant (Appellant) of Section 32 of an 'Act to further Provide for the Revenues of the State of Alabama,' approved March 31st, 1911, which is as follows:

"Sec. 32. *Sewing Machines.*—Each person, firm or corporation selling or delivering sewing machines, either in person or through agents, shall pay Fifty Dollars annually, for each county in which they may sell or deliver said articles, and for each wagon and team used in delivering or displaying the same, an additional sum in each county of Twenty-five Dollars annually, but this section shall not apply to merchants selling the above enumerated articles at their regularly established places of business."

The bill alleges that Appellant ought not to be subjected to, and is not liable for the payment of the taxes provided for therein, upon the grounds that under the state of facts set forth in the bill, it comes within the excepting clause of said section and is, therefore, exempt from its operation; further, that said section of the Act in question is unconstitutional, in that, in its administration, it would violate the State and Federal Constitutions, particularly Section 1 of the 14th Amendment of the Constitution of the United States providing that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; deprive any person of life, liberty, or property, without due process of law; or to deny to any person within its jurisdiction the equal protection of the laws. And the bill alleges that the said section is an effort on the part of the State of Alabama to regulate interstate commerce, in violation of the third clause of Section 8 of Article 1 of the Constitution of the United States.

Defendants, appellees here, demur to said bill and maintain that the facts therein set forth do not show that complainant (appellant) is exempt from the payment of said taxes under the excepting proviso; nor do they show that said Section 32 is repugnant to the State Constitution or the Constitution of the United States in the particulars alleged.

The bill, among other things, sets forth the following state of facts; Complainant (Appellant), a foreign corporation, organized under the laws of New Jersey, duly authorized to transact its business in the State of Alabama, has established some thirty-six regular places of business, or stores, throughout the State, in various towns and cities, and engages wholly in the business of buying and selling sewing machines, parts thereof to remedy defects or breakage, and sewing machine accessories such as oil, needles, etc.; which goods and wares, as above described, are kept at its said stores, for sale to the general public.

With the exception of the county of Russell, the business of Appellant in all the counties of the State of Alabama is conducted as follows: "Some of the sewing machines sold by it in the State are delivered to its salesmen at its regularly established places of business, and then taken by its salesmen through the rural districts of the State of Alabama, and sold from such wagons and teams, and, in some instances, delivery to the purchasers is made contemporaneously with the sale, and in other instances such salesmen use the machines so carried about on such wagons displaying them as sample machines, taking orders for other machines, which orders are returned by such salesmen to its regularly established places of business in the State of Alabama, * * * as aforesaid, and there accepted or rejected, and if accepted, the machines are forwarded to the purchaser on such orders * * *

that Complainant (Appellant) also sells sewing machines at its regularly established places of business in said counties, as aforesaid, and delivers such sewing machines to purchasers by using wagons and teams * * * Complainant (Appellant) has in its employ one hundred and ninety-seven sewing machine agents and employees in the State of Alabama, and has and is using one hundred and sixty-five wagons and teams in the State of Alabama in so displaying, selling and delivering such sewing machines.

It appears from the allegations of the bill that the Appellant is a merchant engaged in the business of selling and delivering sewing machines in the State of Alabama, and that it has many regularly established places of business within said State; and that it also has a regularly established place of business in Columbus, Georgia, which city adjoins Russell County, Alabama, on the east.

PROPOSITIONS INVOLVED.

As will be seen from the foregoing statement the questions involved are:

First—Under the facts stated does Section 32 of the Revenue Act of Alabama of 1911, violate the commerce clause of the Constitution of the United States.

Second—Does it violate the 14th Amendment to the Constitution of the United States in that it denies to the Appellant the equal protection of the law.

Third—Does it violate the 14th Amendment to the Constitution of the United States in that it deprives the Appellant of its property without due process of law.

Fourth—Is the Appellant a merchant selling sewing machines at its regularly established places of business so as to be exempt from taxation under the terms of the Act.

ARGUMENT.

For the proper presentation of this case, and a proper understanding thereof, we shall first discuss the question last above stated.

First, that under the allegations of the bill, which must of course be taken as true upon demurrer, and this case is brought here by appeal from a decree based alone upon rulings upon demurrer, the Appellant is a merchant, we do not question, but that it is a merchant in such sense as to be exempted from paying the license imposed by Section 32 of the Revenue Act of 1911, we do most emphatically deny, for the reason that the Act which subjects the agents of the Appellant, and its wagon and teams to the tax imposed by said Section 32 is not an act performed by it as a merchant.

The Act, if it is properly construed, it is the Appellees' contention, imposes a license, not upon merchants for doing business at their regularly established places of business, or for delivering articles either by agent or by wagon and team which are sold from their regularly established places of business, but imposes a tax upon one, whether he may be a merchant or not, who engages in the business of selling or delivering sewing machines, or uses a wagon and team for delivering or displaying sewing machines away from his regularly established place of business; who sells or delivers and uses a wagon and team in delivering or displaying these articles as a peddler would do; that it is in the nature of a license imposed upon the peddlers of sewing machines as distinguished from carrying on the business at a regularly established place of business as a merchant.

The bill shows upon its face that the agents of the company travel around the State and sell and deliver from wagons sewing machines which they carry with them. This is entirely distinct and separable from the agent going out and soliciting trade for the merchant, and the merchant making the sale, or the agent for him making the sale at a regularly established place of business; and it is essentially different from the delivery by the wagons and teams of sewing machines sold by the merchant from his regularly established place of business.

In reply to the contention of the Appellant which insists that the tax is violative of the principles laid down by the Supreme Court of Alabama in the case of *Alabama Consolidated Coal & Iron Company v. L. L. Herzberg*, 59 South. 305, we wish to call the Court's attention to the following proposition: In the Herzberg case, supra, the Court held that the license on a commissary or store at which employees traded on checks was a license not imposed upon the business, but based solely upon the manner in which the business was conducted, and was, therefore, repugnant to the Constitution, both State and Federal, but the tax imposed in the case at bar, we respectfully insist is not a tax upon the manner of doing business, as contended by Appellant, but is a tax upon a separate and distinct business; that is, it is not a tax upon the merchant for doing business as a merchant, but it is a tax upon a person, firm, or corporation, not for doing business as a merchant, for that business is expressly excepted, but for doing a business which is nothing more nor less than a peddling business, and statutes imposing license upon peddlers or the business of peddling have been so often upheld that it is not necessary to quote authority therefor to this Court.

The provision of the statute, "Each person, firm or corporation selling or delivering machines either in person

or through agents—and for each wagon and team used in delivering the same," are statutory definitions of peddling, especially when considered in connection with the provision of the statute that it shall not apply to merchants selling at their regularly established places of business. The word *peddle* means "To travel about the country and sell small wares; to sell or retail in small quantities while traveling about." The word *peddler* means "A petty dealer who carries his wares with him." Certainly one who carries an article with him and sells the article he carries with him is a peddler, if he makes a practice of so doing, and certainly traveling about the country, selling from wagons and teams articles carried in such wagons is peddling."

We again beg leave to quote from the opinion of the trial court:

> "It seems to me that there is a clear distinction between persons selling sewing machines at regularly established places of business, and selling and delivering such articles from wagons and teams traveling about over the country, 'going from county to county.' They are two entirely distinct occupations. It may be difficult to distinguish these classes in principle, but the power of the Legislature to make this discrimination has not been questioned.—*Cook v. Marshall County*, 196 U. S. 261-274; *Armour Packing Company*, 200 U. S. 226; *Connolly v. Union, etc.*, 184 U. S. 540; *Quartlebaum v. State*, 79 Ala. 4. I think it cannot be successfully claimed that it is beyond legislative power to make its classification of occupations."

In this connection we also wish to call the court's attention to the case of *Emert v. Missouri*, 156 U. S. 296, in which it is held that peddlers have been recognized as a

distinct class from early times in England and America, and that they might be so taxed.

We now approach the discussion of the questions raised as to a violation of the Constitution of the United States under the 14th Amendment, and we beg again to be permitted to quote from the opinion of the trial court:

> "The Supreme Court of the United States, in *The Oil Co. v. Texas*, 217 U. S. 114, said: 'The 14th Amendment of the Constitution of the United States was not intended to cripple the taxing power of the State or to impose upon them any iron rule of taxation. This court will not speculate as to the motive of a State in adopting taxing laws, but assumes that it was adopted in good faith. A State may prescribe any system of taxation it seems best, and it may without violating the 14th Amendment classify occupations, imposing a tax on some and not on others, so long as it treats equally all in the same class.'
>
> An occupation tax on all dealers in sewing machines does not deprive dealers in those articles of their property without due process of law, or deny them the equal protection of the law, because a similar tax is not imposed on dealers in other articles.—*The Oil Co. v. Texas, supra.*
>
> The statute makes no distinction among persons selling sewing machines. The burden of the present tax falls equally on every person, firm, or corporation selling sewing machines, and an additional tax on every such person for each wagon and team used in delivering or displaying the same.
>
> As I construe the statute, it imposes a license tax on every person selling sewing machines, for each

county in which he may sell said articles; and it imposes an additional license tax on each person for each wagon and team used in delivering said sewing machines in such county. One tax is for the privilege of engaging in the business of selling sewing machines, and the other is for the privilege of using a wagon and team in delivering or displaying sewing machines. These taxes are imposed upon the business of selling and upon the business of delivering or displaying sewing machines by the use of wagons and teams. The two businesses may be engaged in by one and the same person, or by different persons. In the case at bar, the two occupations are engaged in by the same person, but that makes no difference in the principle involved. The Legislature has seen proper to classify them and to impose a tax upon each, which we have seen it has, under its taxing power, the right to do. In the Herzberg case, cited by Complainant's (Appellant's) counsel, the court held that the tax was not imposed upon the business, but solely upon the manner in which a party may conduct the business. I do not consider the cases at all alike. The case cited was where the Legislature undertook to tax the manner in which a party may conduct the business as the same related to the compensation of his employees.

On the facts alleged in paragraph 6 of the bill, as to the conduct of the business of Complainant in Russell County, Section 32 of the statute under consideration has no application, the sales made to buyers in Russell County being made at Complainant's regularly established place of business in Columbus, Georgia, and the articles sold and delivered to buyers in Russell County, Alabama. Said facts, in my judgment, show a case of interstate commerce.—153 U. S. 289.

The unconstitutionality of said section, even if conceded, would not operate to bring the Complainant within the class not intended by it.—*Ballou v. State,* 87 Ala. 144.

The Supreme Court of the United States in *The Oil Co. v. Texas, supra,* said: 'The Federal Court cannot interfere with the enforcement of the statute simply because it may disapprove its terms, or question the wisdom of its enactment, or because it cannot be sure as to the precise reasons inducing the State to enact it.' And the Supreme Court of Alabama has said: 'Unless it is clear that the Legislature has transcended its authority it is our duty to declare its acts constitutional.—*Sadler v. Langham,* 34 Ala. 311; *Stein v. Leeper,* 78 Ala. 517."

We do not feel that it is necessary or needful that anything be added to the opinion of the Trial Judge in reference to the questions raised under the 14th Amendment to the Constitution of the United States, and we shall therefore pass to the discussion of the alleged violation of the 8th clause of the first article of the Constitution, the commerce clause.

Since the decision of this case in the court below, this court has had under consideration a somewhat similar question in reference to an Act of the State of Arkansas, which was determined to be in violation of the commerce clause of the Constitution.—*Crenshaw v. Ark.,* 227 U. S. 389.

We respectfully submit that the conclusion in that case recognizes the distinction relied upon by the Appellees in the case at bar, and clearly shows that the Act of the Legislature in the case here under consideration is not in

violation of the commerce clause of the Constitution of the United States, but is clearly a proper exercise of the legislative power of the State.

In the *Crenshaw Case, supra,* and all of the cases there considered and relied upon, the goods sold were shipped from another State for the express purpose of being delivered to the particular purchaser, but in the case at bar, the sewing machines are taken from the general stock kept in a regularly established store in this State, and are carreid by the agent in wagons and teams and sold and delivered by the agent from the wagons and teams, no order being taken and sent for acceptance beyond the confines of the State, or even to the store within the State, but in cases where they are not paid for the store within the State maintains the right to cancel the sale and retake possession of the machine, provided the notes or other evidences of debt taken by the agent are not satisfactory to those in charge of that particular local store, but the transaction in some cases according to the allegations of the bill is fully concluded and the machines delivered by the agent from the wagon, and in other instances where not so fully concluded between the agent and the purchaser at the time of delivery, they are concluded by the representatives of the company within the State, and in no instance is the machine ever shipped from without the State to this State for delivery to any particular person.

We further submit that it is the shipment from beyond the State to the agent within the State of a particular article to be delivered to a particular purchaser, which has caused this court to declare license laws of the State which impose a tax upon such a transaction violative of the commerce clause of the Constitution of the United States, and in no instance has this court ever declared a law of the State placing a license upon an agent or any other method

of selling articles unconstitutional, as violating the commerce clause of the United States Constitution unless the article sold was shipped from without the State into the State for the express purpose of delivering to the purchaser under a contract made before the property left the State of its origin.

And we further respectfully submit that the case at bar is of the same character as the one involved in *Emert v. Missouri, supra,* where this court, speaking through Mr. Justice Gray, said:

> "The defendant's occupation was offering for sale and selling sewing machines, by going from place to place in the State of Missouri, in a wagon, without a license. There is nothing in the case to show that he ever offered for sale any machine that he did not have with him at the time. His dealings were neither accompanied nor followed by any transfer of goods, or of any order for their transfer from one State to another, and were neither interstate commerce in themselves, nor were they in any way directly connected with such commerce."

In *Crenshaw v. Arkansas, supra,* in speaking of the *Emert Case,* this court said:

> "In the *Emert Case,* therefore, there was no movement of goods in interstate commerce because of orders taken for their sale, but the specific articles carried about by the peddler, and none other, were sold and delivered by him."

In the case at bar, there was no movement of the goods in interstate commerce, because of an order for the same. The goods, if moved at all, were moved from established

stores in the State, and from a stock maintained in the State for general use, and not for sale to any particular purchaser under a contract to be filled from without the State.

Respectfully submitted,

Robert C. Kitchell

Attorney General.
Attorney for Appellees.

No. 458.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1913.

SINGER SEWING MACHINE COMPANY,
Appellant,

vs.

ROBERT C. BRICKELL, ATTORNEY GENERAL,
et als.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

MOTION OF APPELLEES TO ADVANCE CAUSE.

The Brown Printing Company, Montgomery, Ala.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1913.

SINGER SEWING MACHINE COMPANY,
Appellant,

vs.

ROBERT C. BRICKELL, ATTORNEY GENERAL,
et als.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

MOTION OF APPELLEES TO ADVANCE CAUSE.

Come the appellees in the above entitled cause and move the court to advance this cause on the docket of this court, and to set a date for the argument and submission thereof, and for grounds of said motion show and represent unto the court:

1. That this is an appeal from a decree of the United States District Court for the Southern District of Alabama, and a cause wherein the appellant, plaintiff below, sought to enjoin the collection of certain taxes due by it

to the State of Alabama, and the counties thereof, and that although the appellees, the officers of the State of Alabama, and of several of the counties thereof, were successful in the court below, the appellant, plaintiff below, continued and still continues to pay the taxes assessed against the complaint, appellant here, under protest, so as to prevent the payment of same by the tax officers of the State, and of the various counties of the State, into the treasury of the State, and into the treasury of the various counties of the State; and that thereby the State of Alabama is deprived annually of the sum of, approximately, $15,000, and the several counties of the State of the sum of, approximately, $7,500.

Also that the purpose of said suit is to determine the validity of Section 32 of an act of the Legislature of Alabama, approved March 31, 1911, entitled, "An act to further provide for the revenues of the State of Alabama," which said Section 32 is in words and figures as follows:

> "Section 32. Sewing Machines.—Each person, firm, or corporation, selling or delivering sewing machines, either in person or through agents, shall pay fifty dollars annually, for each county in which they may sell or deliver said articles. And for each wagon and team used in delivering or displaying the same an additional sum of twenty-five dollars annually; but this section shall not apply to merchants selling the above enumerated articles at their regularly established places of business."

It is claimed by Plaintiff, appellant here, that this section of the act is violative of the third clause of Section 8, of Article 1, of the Constitution of the United States, in that it is an effort on the part of the State of Alabama to regulate commerce among the several states, and because said act is violative of the 14th amendment of the Consti-

tution of the United States, in that it is an effort on the part of the State of Alabama to make or enforce a law which shall abridge the privileges or immunities of citizens of the United States, and deprives them of their property without due process of law, and denies them the equal protection of the law.

This cause was tried and disposed of in the court below on demurrer, and presents therefore only a question of law, not a question of fact.

Wherefore, the premises considered, appellees pray that this cause may be advanced upon the docket of this court, and a day set for the argument and submission thereof, of which due notice be given all parties.

Robert Ll. Bricknell

Attorney General,
Attorney for Appellees.

ARGUMENT IN SUPPORT OF MOTION.

The motion to advance this cause is urged under Section 949 of the United States statutes, this being a case involving the revenues of the State.

We hardly deem it necessary to stress upon the court the importance to the State and to the counties thereof, of being able to promptly collect their revenues, and the case at bar being one of that character, which not only involves the revenue derived from the complainant, but which, if decided against the contentions of the State will also deprive them of revenue from other persons and corporations similarly situated, the necessity for its

prompt decision seems evident and the motion would, therefore, seem to need no further argument.

Respectfully submitted,

Robert C. Brickell

Attorney General,
Attorney for Appellees.

To the Singer Sewing Machine Co., or John R. Tyson, its attorney of record:

Take notice that the appellees in this cause will make a motion in the Supreme Court of the United States on the 10th day of November, 1913, to advance this cause on the docket of said court, and to set a date for the argument and submission thereof, at which time you can be present if you so desire.

Robert C. Brickell

Attorney General,
Attorney for Appellees.

I, Robert C. Brickell, Attorney General of the State of Alabama, and attorney for the appellees in the above entitled cause, hereby certify that I have this day delivered a copy of the foregoing motion and argument to John R. Tyson, attorney of record for the apellant.

Nov. 1, 1913.

Robert C. Brickell

Attorney General,
Attorney for Appellees.

SINGER SEWING MACHINE COMPANY *v.* BRICKELL, ATTORNEY GENERAL OF THE STATE OF ALABAMA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

No. 458. Argued January 12, 1914.—Decided April 6, 1914.

Where orders are taken in one State for goods to be supplied from another State, which orders are transmitted to the latter State for acceptance or rejection, and filled from stock in that State, the business is interstate commerce and not subject to a state license tax. *Crenshaw* v. *Arkansas*, 227 U. S. 389.

The separate license tax imposed by the statutes of Alabama on the business of selling or delivering sewing machines, either in person or through agents, for each county and for each wagon and team used in delivering the same is not, as to a corporation having regular stores established in the different counties to which it sends its goods in bulk and from which they are sold on orders to be approved by it at

its home office, unconstitutional as denying due process of law, or as interfering with interstate commerce, or as denying equal protection of the law because it does not apply to merchants selling such machines at regularly established places of business.

In determining whether a state tax statute is constitutional, there is a presumption that the legislature intended to tax only that which it had the constitutional power to tax, and the statute will be sustained if full and fair effect can be given to its provisions as confined wholly to intrastate business.

While a state license statute if void in part may be wholly void where its provisions are not separable, it may be sustained so far as it relates to business wholly intrastate and held inapplicable as to interstate commerce; and so *held* that the Alabama sewing machine license tax is constitutional as to those agencies of a foreign corporation which carry on an intrastate business and inapplicable as to those agencies of such corporation which carry on a wholly interstate business.

The classification of merchants selling sewing machines at regular places of business as distinguished from a manufacturer selling them by traveling salesmen is not so unreasonable and arbitrary as to render it a denial of equal protection of the law under the Fourteenth Amendment.

The State has a wide range of discretion in establishing classes for revenue taxes, and its laws will not be set aside as discriminatory if there is any rational basis for the classification.

The court below rightly held that a foreign corporation having an agency in each county of the State and selling sewing machines by traveling salesmen as well as at the agencies was subject to the license intended to be imposed on itinerant sales by the statute of Alabama, and that it fell without the excepted class of merchants although the latter made deliveries of machines by wagon.

APPELLANT, which is a New Jersey corporation carrying on a mercantile business in many places in the State of Alabama in the sale and renting of sewing machines, in part from regularly established places of business and in part by means of delivery wagons going from place to place in the respective counties in which its stores are located, filed its bill of complaint against appellees, who are the agents of the State charged with the administration of the tax laws, and therein sought to restrain by

injunction the enforcement against it of the state tax prescribed by § 32 of an act for providing revenues, approved March 31, 1911 (Session Acts, p. 180), which reads as follows:

"Sec. 32. Sewing Machines.—Each person, firm or corporation selling or delivering sewing machines either in person or through agents, shall pay fifty dollars annually, for each county in which they may sell or deliver said articles. And for each wagon and team used in delivering or displaying the same an additional sum in each county of twenty-five dollars annually; but this section shall not apply to merchants selling the above enumerated articles at their regularly established places of business."

And also to enjoin the enforcement of county taxes, amounting to fifty per centum of the state tax prescribed by the above section, which might be imposed in the several counties for county purposes under § 33F of the same act.

The bill, as amended, besides showing diverse citizenship of the parties, avers that complainant is qualified under the state laws to do business within the State as a foreign corporation, and has established, in thirty counties of the State, thirty-six regular places of business or stores, which are conducted by it; that complainant buys sewing machines and parts to supply breakage and defects therein and a variety of sewing machine accessories without the State, causes them to be shipped to its places of business within the State, and keeps them at these places for sale to the general public.

In each of the counties, except the County of Russell, the business is conducted as follows: a resident agent is employed for the purpose of making contracts for the sale and renting of machines in that county and that county only; machines are delivered to such agents and placed aboard wagons and taken by the agents into the

rural districts for the purpose of soliciting customers either to purchase or to rent machines; when a buyer is found the machine is delivered by the agent to the customer, who either pays cash for it or executes an instalment note in which the company retains title to the machine, or an instalment note secured by a mortgage upon the machine and other property; such sale on credit is made subject to the approval of the company, and if not approved the instalment note is returned to the maker and the machine returned to the company. If the agent makes a contract for the sale of the machine for cash this also is subject to the approval or disapproval of complainant. The final consummation of all sales is at one of complainant's established places of business. The same agents are engaged also in renting machines and collecting the rent arising therefrom, and the greater portion of their time is consumed in such renting, this constituting at least seventy per centum of the business done by complainant in the State. Rented machines are placed aboard wagons and taken by the agents into the rural districts. Each of these agents is attached to some one of the stores or places of business operated by complainant, and the machines handled by the agent are sent to him from the place of business to which he is attached, or taken from that place of business by him upon the wagon which he drives. Besides this, complainant sells and rents machines at its regularly established places of business and delivers such machines to the buyers or renters by the use of wagons and teams; and in those counties where complainant has established places of business, machines sold or rented at those places are delivered by the same agents and with the same wagons that are used in carrying machines into the rural districts. It is averred that the machines are of the average weight of 135 pounds. That there are many other merchants in the State who sell sewing machines of a different manu-

facture at their places of business, and the average weight of these also is about 135 pounds; that on account of their weight it is the custom and practice of complainant, and of the other merchants also, to make delivery by the use of wagons and teams whether the sales are made at their places of business or otherwise, and that it is impracticable to conduct the business without delivery by wagon.

With respect to the business conducted in Russell County, Alabama, it is averred that complainant operates a regularly established place of business in the City of Columbus, Georgia, where sewing machines and accessories are kept for sale, and in connection with this business agents are employed to deliver machines and accessories in Russell County, which adjoins the Georgia state line; and that complainant does not sell or deliver any sewing machines or accessories in Russell County except in the following manner, namely, its agents use wagons and teams in going about and displaying sample machines, and thereby obtain orders for machines and accessories, which orders are transmitted by the agents to the complainant at Columbus, Georgia, for acceptance or rejection, and if accepted the machines or other articles so ordered are taken out of stock there, placed upon wagons, and thereby delivered to the purchasers in Russell County.

The bill is based upon the contention that § 32 of the tax law violates the Constitution of the United States in that it is a regulation of interstate commerce, and contravenes the "due process" and "equal protection" clauses of the Fourteenth Amendment, and also that it violates the constitution of Alabama; and, finally, that appellant is within the exception of the statute.

To the original bill (prior to the amendments) demurrers were filed, and were sustained as to the whole bill except paragraph 6, which set forth the mode of conducting complainant's business in Russell County. As to this the court held that the facts showed a case of inter-

state commerce, and that the act had no application to it. 199 Fed. Rep. 654.

The amendments having been made, the amended bill was submitted upon the same demurrers, which were made to apply to the bill as amended. Again the court sustained the demurrers except as to paragraph 6 relating to Russell County, and as to this overruled them. Defendants then filed an answer admitting the allegations of paragraph 6, and the cause was submitted upon bill and answer, with the result that by final decree relief was accorded to complainant as to the license tax sought to be collected in Russell County, and in other respects relief was denied and the bill dismissed. Because of the constitutional questions, a direct appeal to this court was taken under Judicial Code, § 238.

Mr. John R. Tyson, and *Mr. Henry Axtell Prince*, with whom *Mr. M. A. Gunter* was on the brief, for appellant:

This court has jurisdiction of a direct appeal from the District Courts of the United States when the constitution or law of a State is claimed to be in contravention of the Constitution of the United States. Judicial Code, § 238.

Although the appellant may insist that the law which is impeached has no application to his case, or that the *res* does not, for any reason, come within its terms, yet, if he insists *bona fide* that, though such defenses fail, the unconstitutionality of the law protects him, the court has jurisdiction, since "the question is (was) a substantial one, and is (was) directly presented, and its determination (is) required," unless other defenses succeed. *Smoot* v. *Heyl*, 227 U. S. 518.

When the constitutional question does not arise except on the condition of a preliminary question of general law being decided in favor of the appellant, then it cannot be said to be directly and necessarily involved and the court has no jurisdiction, as in *Empire Co.* v. *Hanley*, 205 U. S.

255; *Cosmopolitan Mining Co.* v. *Walsh*, 193 U. S. 460; *Casey* v. *H. & T. C. Ry.*, 150 U. S. 170; *Sloan* v. *United States*, 193 U. S. 614; *Muse* v. *Arlington H. Co.*, 168 U. S. 430.

When the constitutional point is directly presented and is necessarily involved in any decision against the appellant, though he may have preliminary points which might protect him without considering the constitutional question, the court has jurisdiction of the appeal, as is expressly decided in the *Smoot Case, supra. Penn Mut. Life Ins. Co.* v. *Austin*, 168 U. S. 685; *Mayor* v. *Vicksburg*, 202 U. S. 453; *Field* v. *Barber Asphalt Co.*, 194 U. S. 618; *Burton* v. *United States*, 196 U. S. 283; *Ill. Cent. R. R.* v. *McKendres*, 203 U. S. 554.

When the constitutional question is duly presented in the lower court the jurisdiction of this court does not depend upon the question whether the right claimed under the Constitution of the United States has been upheld or denied in the court below; and the jurisdiction of this court is not limited to the constitutional question, but extends to the whole case. Cases *supra* and *Holder* v. *Aultman*, 169 U. S. 81, 88; *Whitten* v. *Tomlinson*, 160 U. S. 231, 238; *Loeb* v. *Columbia &c.*, 179 U. S. 472; *Chappell* v. *United States*, 160 U. S. 499, 509; *Horner* v. *United States*, No. 2, 143 U. S. 570, 577.

When there is no full, adequate and complete remedy at law, there is an unqualified right to appeal to equity, and especially so when in that way only a multitude of ruinous and vexatious law suits, about a single matter, can be avoided. *Boyce* v. *Grundy*, 3 Pet. 210; *West. Union Tel. Co.* v. *Andrews*, 216 U. S. 165; *Ex parte Young*, 209 U. S. 123; *Smyth* v. *Ames*, 169 U. S. 466; *Walla Walla* v. *Water Co.*, 172 U. S. 1, 12; *Meyer* v. *Wells, Fargo & Co.*, 223 U. S. 298.

The equal protection of the laws is denied when, all questions of police power being out of the way, a lawful

business, or the use of property in a lawful way, is palpably and unjustly discriminated against in favor of other business or other use of the same property by the same or other owners.

A business may be taxed for revenue or may be forbidden or regulated under the police power, and so with the use of property, but a business cannot be taxed on account of the manner of conducting it by one citizen while the same business conducted in a different and perhaps less efficient manner by other citizens is exempted. And so as to property. The use of wagons and teams for transporting sewing machines, for sale or display, cannot be taxed merely because they are used in such work while untaxed when not so used and when the same transportation and display may be effected without taxation in any other way. *Ala. Con. Coal Co.* v. *Herzberg*, 55 So. Rep. 305; *Montgomery* v. *Kelly*, 142 Alabama, 552; *Mefford* v. *Sheffield*, 148 Alabama, 539; *Phœnix Carpet Co.* v. *State*, 118 Alabama, 143.

Legislation cannot restrict or coerce industry as to its channels from pure whimsicality, or from any motive disconnected from the due exercise of the police power and from taxation for revenue according to constitutional formulas. Cases *supra* and see Constitution of Alabama, § 35.

A business or property cannot be taxed as a whole and then separately as to its constituents. As a tax on wagons and separately on the spokes of the wheels. *Montgomery* v. *Kelly*, 142 Alabama, 552; *Mefford* v. *Sheffield*, 148 Alabama, 539; *Mobile* v. *Richards*, 98 Alabama, 594; *Gambill* v. *Endrich Bros.*, 143 Alabama, 506.

No state statute can stand which by its terms will burden or regulate interstate commerce. And the courts cannot by judicial limitation preserve the statute in part by restricting its terms to a legitimate field of operation. *Civil Rights Cases*, 109 U. S. 3; *United States* v. *Reese*, 92 U. S.

214; *Howard* v. *Illinois Cent. R. Co.*, 207 U. S. 463; *West. Un. Tel. Co.* v. *Kansas*, 216 U. S. 1; *Crutcher* v. *Kentucky*, 141 U. S. 47, 62; *Norf. & West. Ry.* v. *Pennsylvania*, 136 U. S. 114, 118; *Leloup* v. *Mobile*, 127 U. S. 640; *Galveston &c. R. Co.* v. *Texas*, 210 U. S. 217; *Brimmer* v. *Rebman*, 138 U. S. 78–81; *Butts* v. *Mar. & Mins. T. Co.*, 230 U. S. 126.

Contracts are made, and the "business of selling" is done, at the place where the contract receives the final assent of the mind which concludes the negotiation, converting it into a contract or sale. *Holder* v. *Aultman*, 169 U. S. 81, 88.

Mr. Robert C. Brickell, Attorney General of the State of Alabama, for appellees.

Mr. Justice Pitney, after making the foregoing statement, delivered the opinion of the court.

With respect to the business conducted in Russell County, the decree of the District Court is not now directly under review; but, at any rate, it was clearly correct under *Crenshaw* v. *Arkansas*, 227 U. S. 389. With respect to the other counties, the correctness of the decision, so far as the commerce clause is concerned, seems to us equally clear under *Emert* v. *Missouri*, 156 U. S. 296.

But it is argued that the courts cannot properly sustain a statute which in direct terms applies to all commerce, by restricting it to cases of actual interference with interstate dealings. To quote from the brief: "All such laws as will necessarily affect interstate commerce when it arises are void. We do not have to await actual results on actual commerce to pronounce them void. . . . And, of course, a statute of this character, which is void as a whole, from its unity of character, will as readily be so declared in a case in which only intrastate commerce may be actually involved as otherwise. The lower court was

thus clearly in error in limiting the invalidity of the statute to the dealing in Russell County."

This argument, we think, misses the point. The statute under consideration does not in direct terms or by necessary inference manifest an intent to regulate or burden interstate commerce. Full and fair effect can be given to its provisions, and an unconstitutional meaning can be avoided, by indulging the natural presumption that the legislature was intending to tax only that which it constitutionally might tax. So construed, it does not apply to interstate commerce at all. The statute provides for a license or occupation tax. Normally, as the averments of the bill sufficiently show, the occupation may be and is conducted wholly intrastate, and free from any element of interstate commerce. The fact that, as carried on in Russell County, a like occupation is conducted with interstate commerce as an essential ingredient, is wholly fortuitous.

Nor has the tax that "unity of character" upon which the argument necessarily depends. The cases cited in support of the insistence that the act must be adjudged totally void because if applied in Russell County it would burden interstate commerce are readily distinguishable. In *United States* v. *Reese*, 92 U. S. 214, 221, there was a penal statute couched in general language broad enough to cover wrongful acts without as well as within the constitutional inhibition, and it was held that the court could not reject the unconstitutional part and retain the remainder, because it was not possible to separate the one from the other. In *Trade-Mark Cases*, 100 U. S. 82, 99, the court upon the same principle declined to sustain in part a trade-mark law, so framed as to be applicable by its terms to all commerce, by confining it to the interstate commerce that alone was subject to the control of Congress. In *Leloup* v. *Port of Mobile*, 127 U. S. 640, 647, the court held a general license tax, imposed by the State

of Alabama upon the business of a telegraph company in part interstate and in part internal, to be unconstitutional, and held that since the tax affected the whole business without discrimination it could not be sustained with respect to that portion of the business that was internal and therefore taxable by the State. To the same effect are *Norfolk &c. R. R. Co.* v. *Pennsylvania*, 136 U. S. 114, 119; *Crutcher* v. *Kentucky*, 141 U. S. 47, 62; *Galveston &c. Ry. Co.* v. *Texas*, 210 U. S. 217; *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1, 27. In *Williams* v. *Talladega*, 226 U. S. 404, 419, there was a state license tax that operated without exemption or distinction upon the privilege of carrying on a business, a part of which was that of an essential governmental agency constituted under a law of the United States. It was held that the tax necessarily included within its operation this part of the business, and since this was unconstitutional the whole tax was rendered void.

The statute now under consideration differs materially, in that it deals separately with the business as conducted in each county of the State, and provides for separate taxes to be laid for each county. And the facts as averred in the bill of complaint show that with respect to all of the counties in which appellant does business, excepting only the County of Russell, there is no element of interstate commerce. In each county there is a store or regular place of business, from which all of the local agents for the same county are supplied with sewing machines and appurtenances that are to be taken into the rural districts for sale or renting, and all transactions that enter into the sale or renting are completely carried out within a single county.

It would be going altogether too far to say that appellant, being properly taxable, and without the least interference with interstate commerce, in twenty-nine counties of the State, could obtain immunity from all such taxation

by establishing in one county a system of business that involved transactions in interstate commerce.

So far as the Fourteenth Amendment is concerned, the argument is confined to the "equal protection" clause. It is said there is no sufficient ground for a distinction, with respect to taxing the occupation, between the business of selling sewing machines from a regularly established store and the business of selling them from a delivery wagon. But there is an evident difference, in the mode of doing business, between the local tradesman and the itinerant dealer, and we are unable to say that the distinction made between them for purposes of taxation is arbitrarily made. In such matters the States necessarily enjoy a wide range of discretion, and it would require a clear case to justify the courts in striking down a law that is uniformly applicable to all persons pursuing a given occupation, on the ground that persons engaged in other occupations more or less like it ought to be similarly taxed. This is not such a case. *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 559, 562; *Cook* v. *Marshall County*, 196 U. S. 261, 274; *Armour Packing Co.* v. *Lacy*, 200 U. S. 226, 235; *Southwestern Oil Co.* v. *Texas*, 217 U. S. 114, 121.

In *Quartlebaum* v. *State*, 79 Alabama, 1, 4, a previous statute (sub-section 20 of § 14, act of December 12, 1884; Session Acts 1884–5, p. 17), which imposed an annual license fee of $25 upon "each sewing machine . . . company selling sewing machines . . . either themselves or by their agents, and all persons who engage in the business of selling sewing machines . . . but when merchants engaged in a general business, keep sewing machines . . . they shall not be required to pay the tax herein provided," was sustained against the criticism that it discriminated between two classes of persons engaged in the business of selling sewing machines, namely, between persons who were "merchants engaged in a general business," and persons not so engaged;

the court saying as to the former, "If sewing machines be part of their stock in trade, they are taxed for them as for other merchandise. Their business is in its nature stationary, and there is little or no risk in levying taxes upon their business, on the rule of percentage. That rule may be wholly unsuited and ineffectual for other pursuits, and other lines of business. Much must be left to the discretion of the Legislature, for exact equality of taxation can never be reached." And see *Ballou* v. *State*, 87 Alabama, 144, 146.

The contention that the statute violates the state constitution is grounded upon two sections of the Bill of Rights, viz., § 1, "That all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness;" and § 37, "That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty and property; and when the government assumes other functions, it is usurpation and oppression."

The bearing of these provisions upon the case in hand is not clear. The argument seems to be that since the tax law in question is not a police measure but a revenue measure, the discriminations are arbitrary. To quote from the brief: "Selling sewing machines is the business, and it is taxed highly, and it may be in fact prohibitorily, when it is done by the use of wagons and teams, and not at all when done at stores." There are other suggestions of a like import. They seem to be sufficiently answered by what has been already said respecting the "equal protection" clause of the Fourteenth Amendment. The State has a wide range of discretion with respect to establishing classes for the purpose of imposing revenue taxes, and its laws upon the subject are not to be set aside as discriminatory unless it clearly appears that there is no rational basis for the classification.

The cases cited from the state courts lend no support to appellant's argument. *City of Mobile* v. *Craft*, 94 Alabama, 156; *Mayor and Aldermen of Tuscaloosa* v. *Holczstein*, 134 Alabama, 636, and *Gambill* v. *Endrich Bros.*, 143 Alabama, 506, involved the construction of certain municipal charters and the powers of the respective municipalities thereunder, and have no direct bearing upon the present question. In *Montgomery* v. *Kelly*, 142 Alabama, 552, 559, a municipal ordinance requiring each merchant who issued trading stamps in connection with his business to pay a license tax of $100, viewed in the light of another ordinance that fixed a license fee of $1,000 upon trading stamp companies, was held to be "A palpable attempt under the guise of a license tax, to fix a penalty on the merchant, for conducting his business in a certain way," and therefore unconstitutional. *Mefford* v. *City of Sheffield*, 148 Alabama, 539, sustained a city ordinance that imposed a tax of $200 on wholesale dealers in illuminating oil, while fixing the license tax on dealers in goods, wares, or merchandise in general at $10. *Alabama Consolidated Coal Co.* v. *Herzberg*, 59 So. Rep. 305, declared unconstitutional § 33A of the Revenue Act of March 31, 1911, p. 181, which undertook to impose upon persons, firms, or corporations conducting a store at which their employés trade on checks, orders, or the like, an annual license fee varying according to the number of persons employed; the court saying, p. 306: "The tax is not, therefore, imposed upon the business, or upon all engaged in a similar business, but is based solely upon the manner in which a party may conduct the business; and the foregoing section is repugnant to the state and Federal constitutions under the authority of *City of Montgomery* v. *Kelly*, 142 Alabama, 552."

The other state decisions to which we are referred have been examined, and we are unable to find in them any basis for declaring § 32 of the Act to be in contravention of the state constitution.

Finally, it is said that since it appears from the averments of the bill that all sales of sewing machines by appellant's agents in the field are executory only, and require the approval of appellant at its regularly established places of business, located in the various counties of the State, which are headquarters for all agents with their wagons and teams, it at the same time sufficiently appears that appellant is a merchant conducting a regular business at each of said stores, and therefore within the saving clause of § 32 of the Act in question, which declares that "This section shall not apply to merchants selling the above enumerated articles at their regularly established places of business."

It is quite plain, however, from a reading of the entire section, that the business of selling sewing machines by traveling salesmen is intended to be taxed, and the business of selling them at established places of business is intended to be left untaxed, so far as this section is concerned, although the machines sold at these places be delivered by wagons. Complainant is engaged in doing business of both kinds; and with respect to the itinerant sales it is subject to the tax under the section referred to.

Decree affirmed.